GUIDE TO THE IMPLEMENTATION

of

THE HARD-ROCK MINING IMPACT ACT

and

THE PROPERTY TAX-BASE SHARING ACT

Title 90, Chapter 6, Parts 3 and 4
Montana Code Annotated

prepared by

THE HARD-ROCK MINING IMPACT BOARD

Leonard McKinney, Chairman
Don Kinsey, Vice Chairman
Jim Edwards
Ed Jasmin
Roger Rice

February, 1988

PREFACE

The Hard-Rock Mining Impact Board has prepared the following Guide to assist persons affected by the Hard-Rock Mining Impact Act (1981) and the companion Hard-Rock Mining Property Tax Base Sharing Act (1983). The two Acts are Parts 3 and 4 of Title 90, Chapter 6 in the Montana Code Annotated.

The Guide is the product of six years of experience and discussion among the Hard-Rock Mining Impact Board and mineral developers, local government officials, the Environmental Quality Council, the Montana Mining Association, the Northern Plains Resource Council, the Montana Association of Planners, the Montana Departments of State Lands, Commerce, and Revenue, and other interested persons. The Guide reflects the amendments of the 1983, 1985 and 1987 Legislatures.

The Hard-Rock Mining Impact Board is a five member, quasi-judicial board appointed by the Governor. As required by statute, the Board includes a member of the public-at-large, an elected county commissioner, a representative of a major financial institution, an elected school district trustee, and a representative of the mining industry. At least three members must reside in current or potential impact areas. No more than three members may reside in any one congressional district. Meeting the criteria noted above, those serving on the Hard-Rock Mining Impact Board are:

Leonard McKinney, Chairman, Lewistown, (public-at-large)
Don Kinsey, Vice-Chairman, Big Timber (elected school district trustee)
Jim Edwards, Anaconda-Deer Lodge (elected county commissioner)
Ed Jasmin, Helena (major financial institution)
Roger Rice, Billings (mining industry)

Former Board members include Koehler Stout, past chairman, Butte; Duane Friez, Glendive; and Jim Tulley, Big Timber.

The Board administers the Hard-Rock Mining Impact Act; adjudicates disputes about the content of impact plans for new large-scale mines; notifies the Department of Revenue when to initiate or terminate tax base sharing; and administers a trust account grant-loan program for mitigating economic impacts resulting from mine workforce reduction or closure.

Board meetings are open to the public. Interested persons are encouraged to attend. Agendas are mailed upon request about two weeks before each meeting.

Questions about this publication, the Hard-Rock Mining Impact Act and the Property Tax Base Sharing Act may be addressed to the Hard-Rock Mining Impact Board:

Hard-Rock Mining Impact Board
Local Government Assistance Division/DOC
Cogswell Building, Room C-211
Capitol Station
Helena, Montana 59620

Administrative Officer:
Carol L. Ferguson
Attorney:
Richard M. Weddle
(406) 444-3779

TABLE OF CONTENTS

		Page
Preface		i
Introduction		iv
CHAPTER I	-- PREPARATION OF AN IMPACT PLAN	1
	Scope of an Impact Plan	2
	Required and Functional Provisions of an Impact Plan	3
	Certainty and Flexibility in an Impact Plan	14
	Format of an Impact Plan	15
	Assistance to Local Governments to Prepare For and Evaluate the Impact Plan	16
	Summary	17
CHAPTER II	-- REVIEW AND APPROVAL OF AN IMPACT PLAN	19
	The Impact Plan Review Process	20
	How to Change an Impact Plan After It Has Been Submitted for Review	23
	Communications with Board Members and Staff During the Formal Review Period	26
	After the Plan is Approved	26
	Summary	27
CHAPTER III	-- IMPLEMENTATION OF AN APPROVED IMPACT PLAN	29
	Before the Plan is Implemented	30
	Budgeting and Accounting	30
	Impact Plan Payments	31
	Payment Procedure and Documentation	32
	Conditional Payments	36
	Tax Prepayment and Tax Crediting	36
	Tax Base Sharing	39
	Education Impact Bonds	43
	Monitoring the Impact Plan	43
	Key Events and Dates	44
	Adjustment and Amendment of an Approved Impact Plan	44
	Enforcement	47
	Conclusion	48
CHAPTER IV	-- IMPACT PLANS, WAIVERS AND CONDITIONAL WAIVERS FOR EXISTING MINE PERMITTEES	49
CHAPTER V	-- PROCEDURES FOR PREPARING, REVIEWING AND IMPLEMENTING AN IMPACT PLAN	52
	1. Before the Plan is Submitted/ Preparation of the Impact Plan	52
	2. Upon Submission (by developer) and Receipt (by affected local government units and the Hard-Rock Mining Impact Board) of the Impact Plan	53
	3. Review and Approval of the Plan	54

4. Following Approval of Impact Plan..... 58
5. Implementation of an Approved Impact Plan.... 59
6. Tax Base Sharing..... 61
7. Enforcing the Developer's Commitments..... 62
8. Amending an Approved Impact Plan..... 62
9. Impact Plan Waivers for Large-Scale Permittees..... 64
10. Mitigating Impacts from Mine Workforce Reduction or Closure..... 68

CHAPTER VI -- HARD-ROCK MINING IMPACT ACT TRUST ACCOUNT GRANT-LOAN PROGRAM..... 69

APPENDICES

APPENDIX I -- CHECKLIST FOR REQUIREMENTS FOR A HARD-ROCK MINING IMPACT PLAN
APPENDIX II -- KEY DEFINITIONS AND EVENTS
APPENDIX III -- SAMPLE TABLE OF CONTENTS AND INDEX
APPENDIX IV -- SCHEDULE OF IMPACT PAYMENTS
APPENDIX V -- A. STATEMENT OF CONDITIONS AND ASSUMPTIONS ON WHICH PROJECTIONS ARE BASED
B. CONDITIONS FOR IMPACT PLAN AMENDMENT AND MONITORING
APPENDIX VI -- A. PROOF OF RECEIPT OF PLAN, PUBLIC NOTICES AND PUBLIC HEARING
B. TIMETABLE FOR REVIEW
APPENDIX VII -- OBJECTION TO A PROPOSED HARD-ROCK MINING IMPACT PLAN
APPENDIX VIII -- WRITTEN GUARANTEE OF COMPLIANCE
APPENDIX IX -- FINANCIAL GUARANTEE
A. -- LETTER OF CREDIT
B. -- ESCROW AGREEMENT
APPENDIX X -- SAMPLE BUDGET: STILLWATER COUNTY IMPACT YEAR TWO
APPENDIX XI -- IMPACT PLAN PAYMENTS
APPENDIX XII -- TAX PREPAYMENT AND TAX CREDITING
APPENDIX XIII -- IMPLEMENTATION OF THE PROPERTY TAX BASE SHARING ACT
APPENDIX XIV -- PETITION TO AMEND AN APPROVED HARD-ROCK MINING IMPACT PLAN
APPENDIX XV -- OBJECTION TO A PROPOSED AMENDMENT TO AN APPROVED HARD-ROCK MINING IMPACT PLAN
APPENDICES XVI - XIX [RESERVED]
APPENDIX XX -- APPLICATION FORM FOR GRANT OR LOAN FROM THE HARD-ROCK MINING IMPACT TRUST ACCOUNT PROGRAM

REFERENCES

1. OVERVIEW OF THE HARD-ROCK MINING IMPACT ACT AND THE PROPERTY TAX BASE SHARING ACT
2. SUMMARY OF ROLES AND RESPONSIBILITIES
3. STATUTES: HARD-ROCK MINING IMPACT ACT
HARD-ROCK MINING IMPACT PROPERTY TAX BASE SHARING ACT
EXCERPT: METAL MINE RECLAMATION ACT
STATEMENTS OF INTENT: HB472 AND HB645
4. ADMINISTRATIVE RULES
5. FORMAL STATEMENT OF POLICIES AND GUIDELINES
6. SUMMARY: METALLIFEROUS MINES LICENSE TAX

INTRODUCTION

The large-scale development of Montana's mineral resources brings both costs and benefits to communities, local government units and property taxpayers in the vicinity of the development. The Hard-Rock Mining Impact Act and Property Tax Base Sharing Act address some of the costs, or negative impacts, that may result from the construction, operation or closure of major hard-rock mines.

The Problem

Large-scale development of mineral resources often occurs in relatively rural areas of the State. If the available workforce is unable to meet the increased need for trained employees, a substantial number of people may move into the area to satisfy the requirements of a changing job market. This population influx, and the mineral development itself, may cause an increased demand for local government services and facilities -- affecting schools, water and sewer systems, solid waste disposal, social services, law enforcement, roads and bridges, and even "courthouse functions," such as the recording of deeds.

School districts and other local government units in Montana depend heavily on property taxes as their primary local source of revenue. The receipt of increased property tax revenue generated by a new mineral development lags behind the increase in cost for services and facilities needed as a result of the development.

In order to find housing, schools and other amenities, incoming families may settle in communities and school districts that do not include the mine within their taxing jurisdiction. These local government units do not receive property tax revenue from the development to help pay the increased cost of services needed by the incoming population.

Eventually, every mine that opens will close, because the ore body either runs out or can no longer be mined profitably. When an existing mine closes, or even when it significantly reduces its level of production, the result is a decline in local employment opportunities, a reduction in the local property tax base, and a loss of revenue to local government units.

In each of the circumstances described above, if local governments are to provide needed governmental services, the result may be an increased tax burden for the non-developer local taxpayer. In the case of mine workforce reduction or mine closure, the entire economy of an area may be adversely affected.

The Legislative Response

In 1981, in response to a growing concern about the "boom and bust" pattern of hard-rock mining in Montana's economy, and its effect on local governments and taxpayers, the Legislature engaged in an extensive debate of the merits and costs of various approaches to mitigating the negative impacts of resource development. It considered a single impact mitigation grant-loan program to deal with impacts from resource development of all kinds, financed by existing taxes on resource production, but were reluctant to disturb the active Coal

Board grant program or to mingle funding sources. With the support of several groups, interested legislators proposed a grant-loan program just for hard-rock mining impacts, funded by a new or increased severance tax. However, the proposal met with stringent opposition from the mining industry, which protested that it was already heavily taxed and that an additional tax would affect its competitiveness in the world market. Furthermore, the industry argued, a new tax would continue to be collected long after the initial or "front-end" local government impacts were past, and other taxes, already in place, were theoretically designated for "tail-end" impacts. Industry representatives suggested using income from the Resource Indemnity Trust Fund (RIT) to finance a grant-loan program for impacts from hard-rock mineral development. They encountered strong disagreement among legislators concerning the intended use of the RIT money and opposition based on the fact that, at the time, hard-rock mining had contributed a relatively small percentage of the total RIT revenue.

Finally, with the support of the mining industry and some potentially affected local government units, the Legislature enacted House Bill 718, the Hard-Rock Mining Impact Act. HB 718 incorporated the residue of the RIT approach (authorizing a grant-loan program but without a funding source), included a revised version of an existing statute that authorizes property tax prepayments, and created the hard-rock mining impact plan program to deal with the "front-end" impacts of new large-scale mineral developments. The Act required the mineral developer and affected local government units to work together on the preparation and implementation of an impact plan. The plan was to identify how the mineral development would affect local government services and facilities, how local governments would meet increased service and facility needs, and when and how the developer would pay the increased costs resulting from the development. HB 718 also created the Hard-Rock Mining Impact Board to oversee the implementation of the Act and to resolve disputes between mineral developers and affected local government units.

Recognizing that HB 718 left many issues unresolved, the Legislature then requested the Environmental Quality Council and the Revenue Oversight Committee to conduct a joint study, during the 1981-1983 legislative interim. With the continuing participation of the mining industry, potentially affected local government units, concerned citizen interest groups, and others, the joint committee studied the fiscal and economic impacts of hard-rock mineral development on communities and their local governments, reviewed the new Impact Act, and evaluated the taxation of hard-rock mines in Montana. As a result of the committee's study and recommendations, the 1983 Legislature approved a number of significant amendments to the original Act, broadened the administrative authority and responsibility of the Board, enacted the companion Property Tax Base Sharing Act, revised metal mines license tax rates, and established a trust account and grant-loan program for mine closures.

The Impact Act was further amended in 1985 and 1987, redefining "large-scale mineral development," restricting the definition of "local government unit," providing waivers to the impact plan requirement for certain mine permittees, revising the procedures for crediting prepaid taxes, requiring the mineral developer and affected local government units to ensure that the plan meets statutory requirements and to define the inmigrating population resulting from

the development, and requiring the county governing body to hold a public hearing during the formal review of the proposed impact plan.

Purpose and Methods

Together, the Impact and Tax Base Sharing Acts constitute a mosaic of impact mitigation mechanisms. The Acts are designed to help local governments deal with fiscal impacts resulting from the construction and operation of new large-scale mines and with some fiscal and economic impacts from the reduction in workforce or closure of existing mines that pay the metal mines license tax. By definition, a large-scale mineral development is one "for which the average number of persons on the payroll of the mineral developer and of contractors at the mineral development exceeds or is projected to exceed 75 for any consecutive 6-month period" during the construction and operation of the mine and associated milling facility.

The purposes of the legislation are (a) to enable local government units to provide services and facilities when and where they are needed as a result of new large-scale hard-rock mineral developments (1981); (b) to ensure that the local taxpayer will not have to bear the increased local government costs resulting from the development (1981); (c) to help meet ongoing increased costs from the development in local government units where the mine is not located (1983); and (d) to lessen the negative effect on the local economy and local tax base of a mine workforce reduction or mine closure (1983).

In terms of impact mitigation mechanisms, the two Acts provide for:

(1) the preparation of an impact plan, which becomes a condition of the operating permit of each new large-scale hard-rock mine. In the plan the developer identifies and commits to pay to affected local government units all increased capital and net operating costs resulting from the new mine. Payment may be by means of property tax prepayments, grants, or education impact bonds. The developer may also provide non-financial assistance which will reduce or forestall increased local government costs;

(2) the waiver or conditional waiver of the impact plan requirement for a mine that becomes "large-scale" after receiving its operating permit;

(3) the allocation among affected local government units of the increase in taxable valuation of the mineral development which occurs after the mine operating permit is issued; and

(4) a trust account grant-loan program to mitigate local government and community economic impacts resulting from a 50 percent reduction in workforce or the closure of a mine that has paid metal mines license taxes since 1985.

Almost every feature of the two Acts has generated the same basic question: "What does this mean and how does it work?" This publication is a partial response.

Role of the Board

The Board administers the Hard-Rock Mining Impact Act; adjudicates disputes about the content of impact plans for new large-scale mines; grants waivers or conditional waivers to certain mine permittees; determines whether a mine permittee is complying with the requirements of the two Acts, an approved impact plan or a conditional waiver, as required, and notifies the Department of State Lands of its determination; notifies the Department of Revenue of when to initiate or terminate tax base sharing; and administers a trust account grant-loan program for mitigating local economic impacts of mine workforce reduction or closure.

In granting administrative rulemaking authority to the Board, the Legislature instructed the Board that administrative rules related to impact plans:

> ... must ensure that implementation of the act is consistent with the purpose of mitigating local government impacts that may result from the commencement of large-scale hard-rock mineral developments in the state.

Through this publication and its rules and policies, the Board is trying to address what the statutes mean and how they work by providing: (a) a reasonable and consistent interpretation of the Impact and Tax Base Sharing Acts; (b) information useful to mineral developers and local government units that are responsible for the preparation, review and implementation of an impact plan; (c) policies and procedures necessary to implement the trust account grant-loan program; and (d) consistency in the Board's administration of the Impact Act.

The Publication

The Guide describes both the procedural and substantive requirements for the preparation, review and implementation of an impact plan. It discusses some key factors that may contribute to achieving a workable plan that is consistent with the purpose and requirements of the Act.

Chapter IV summarizes the provisions for an impact plan waiver or conditional waiver for a new mineral development that becomes large-scale after receiving its operating permit.

Chapter VI outlines the provisions of the trust account grant-loan program and the policies and procedures adopted by the Board for its implementation.

The Appendices provide additional resources, including: the Impact and Tax Base Sharing Acts; excerpts from the Metal Mines Reclamation Act in which the developer is required to comply with the impact legislation; the Board's administrative rules and policies; a checklist of the required format and content of an impact plan; sample forms and documents associated with the review, implementation and amendment of an impact plan (public notices, objections, written and financial guarantees, payments, and petitions for amendment); a detailed description of the implementation of the Tax Base Sharing Act; and excerpts from approved impact plans which illustrate what an impact plan is and how the Act works (assumptions, conditional commitments, provisions for amendment.)

The Guide will be revised as necessary to comply with changes in statute, administrative rules, or Board policy, and to provide additional information useful in implementing the Impact and Tax Base Sharing Acts.

Statutes and Rules

The Hard-Rock Mining Impact Act and the Property Tax Base Sharing Act are found in Parts 3 and 4 of Title 90, Chapter 6 of the Montana Code Annotated (MCA). To implement the Impact Act, the Hard-Rock Mining Impact Board has adopted Rules 8.104.101 through 8.104.305 in the Administrative Rules of Montana (ARM). The Board's administrative rule-making authority is specified in 90-6-305, MCA; its rule-making responsibility is discussed in statements of intent attached to the Hard-Rock Mining Impact Act and to the bills that amended the original Act in 1983, 1985 and 1987.

Sections 82-4-335 and 82-4-339, MCA, require the mineral developer's compliance with the impact legislation as a condition of the mine's operating permit.

The provisions of an impact plan and the implementation of the plan must also be consistent with the laws and regulations to which local governments are subject in the exercise of their powers and duties.

The Reference Section begins with a summary of the Hard-Rock Mining Impact Act and The Property Tax Base Sharing Act and an outline of the roles and responsibilities of affected parties.

Environmental Impact Statements and Impact Plans

If the Department of State Lands prepares an environmental impact statement (EIS) for the proposed large-scale mineral development, there is an assumption, not always correct, that the EIS process and the impact plan process will be roughly concurrent. The parties to the plan are to have access to data and information gathered for or generated by the EIS. An EIS assesses the broad scope of social and economic impacts, while the impact plan takes these impacts into account and focuses on identifying and mitigating the mineral development's impacts on local government services and facilities.

Because of where the mines are located, an EIS is not necessary for some proposed large-scale mines, but may be required for a mine that is not "large-scale." An EIS is needed only if the mine is expected to cause significant adverse impacts to the quality of the human environment, which encompasses both the physical and the social-economic environment. An impact plan is required for all proposed, large-scale mineral developments, regardless of the extent or magnitude of the anticipated impact on local government services.

Two impact plans have been prepared in which the only identified impacts were the need to upgrade and maintain the county road which serves as the access road to the mine. Another plan anticipated no impacts to local government services and facilities. In all three cases the proposed mines were located in populous areas with high unemployment and with a substantial amount of available housing and local government service capacity. Very little inmigration was expected because of the mines.

In other circumstances, the mineral development may cause significant impacts. The preparation and review of an impact plan may be a complex and time-consuming matter, requiring both the developer and the affected local government units to obtain the assistance of persons with specialized skills to help generate and evaluate the data, assumptions and projections on which the plan is based. Because of this, the Legislature has provided that local government units may request financial or other assistance from the developer to help them "prepare for and evaluate the impact plan." The request for assistance is made through the county, which contracts with the developer on behalf of the local government units in the county. Such financial assistance constitutes a tax prepayment by the developer to the local government unit receiving the assistance.

If the impacts are substantial or the plan is complex, the developer and affected local government units may also have to commit considerable time and effort to the implementation of an approved impact plan.

Conclusion

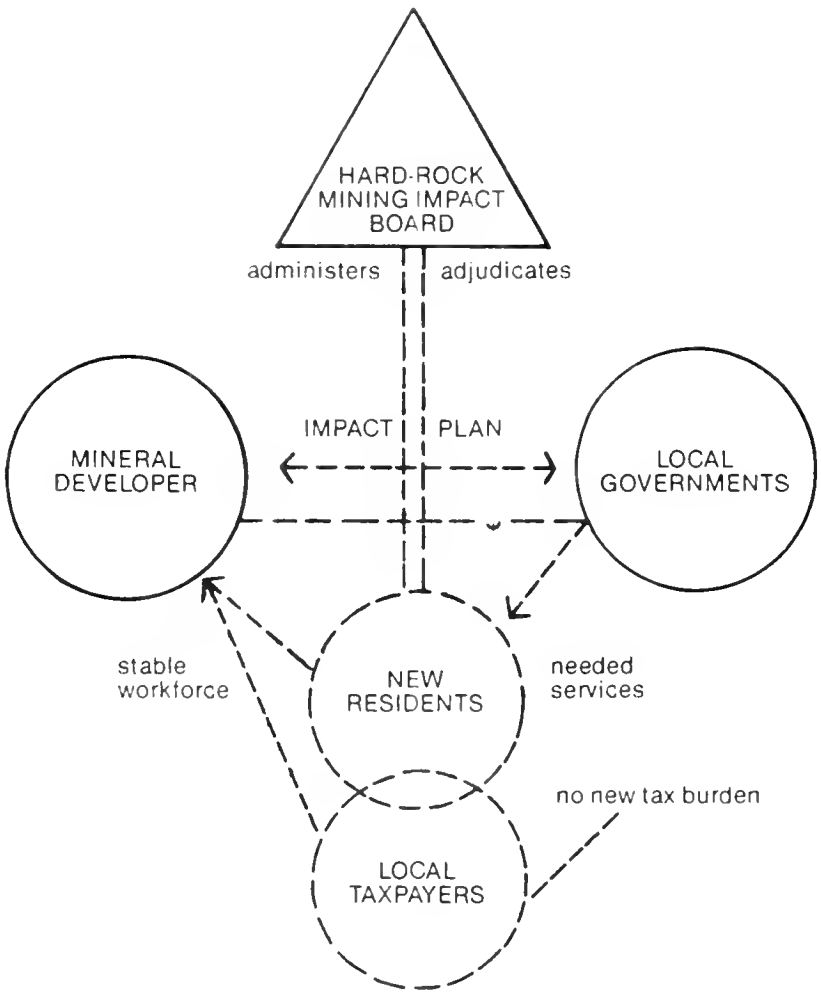
Although mineral developers and affected local government units, in their respective roles, are responsible for the preparation, review, and implementation of impact plans, they are not the primary beneficiaries of the Impact Act. They, along with the Board, carry out their roles and responsibilities on behalf of those persons who will need local government services and facilities as a result of the mineral development and on behalf of the non-developer local taxpayer who is to be spared the burden of increased costs resulting from a new, large-scale mineral development.

Recognizing the intent of the legislation and the benefits to all concerned, the Board encourages mineral developers and affected local government units to cooperate in the preparation and implementation of their impact plans.

THE HARD-ROCK MINING IMPACT ACT
AND
THE HARD-ROCK MINING IMPACT PLAN

* Through the hard-rock mining impact plan, the large-scale mineral developer identifies and pays for increased costs to local government units for services and facilities needed as a result of the new mineral development. The developer prepares the plan with the cooperation of the affected local government units. Local governments review the plan before it is approved. Together they implement the approved impact plan.

* The Hard-Rock Mining Impact Board administers the Impact Act and adjudicates disputes over the impact plan.



* As a condition of its operating permit for the mine, the developer must comply with the requirements of the Impact Act and with its commitments in the impact plan.

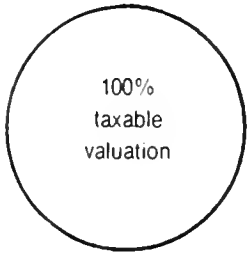
THE HARD-ROCK MINING IMPACT PLAN
AND
THE PROPERTY TAX BASE SHARING ACT

* The impact plan may result in allocation of the increase in taxable valuation of the mineral development among affected counties, incorporated towns, and school districts.

WITHOUT TAX BASE SHARING

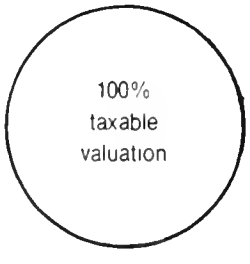
The taxable valuation of the mineral development stays with the county and school districts in which the mine is located.

COUNTY



HIGH SCHOOL DISTRICT #1

ELEMENTARY SCHOOL DISTRICT #1

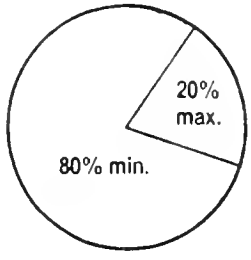


WITH TAX BASE SHARING

The increase in taxable valuation of the mineral development is allocated among the counties, incorporated towns and school districts in which mine employees and their school-age children reside.

COUNTY — TOWN

% mine employees residing in county or town = adjusted % of increase in taxable valuation



Total for All Towns: not to exceed 20%

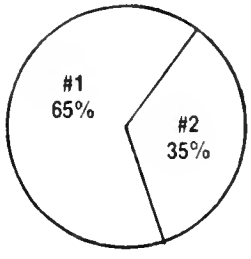
Counties: not less than 80% (plus 100% of pre-permit valuation)

HIGH SCHOOL DISTRICTS

% mine employees' school-age children residing in district = % taxable valuation allocated to district

H.S. #1 = 65%

H.S. #2 = 35%



H.S. #1 = 65% (plus 100% of pre-permit valuation)

H.S. #2 = 35%

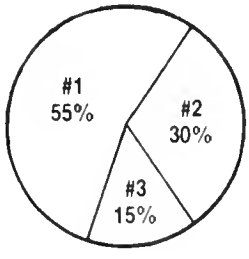
ELEMENTARY SCHOOL DISTRICTS

% mine employees' school-age children residing in district = % taxable valuation allocated to district

E.S. #1 = 55%

E.S. #2 = 30%

E.S. #3 = 15%



E.S. #1 = 55% (plus 100% of pre-permit valuation)

E.S. #2 = 30%

E.S. #3 = 15%

THE HARD-ROCK MINING IMPACT ACT
AND
THE HARD-ROCK MINING IMPACT TRUST ACCOUNT
GRANT AND LOAN PROGRAM

* The State allocates 33 percent of its metal mine license tax revenue to the Hard-Rock Mining Impact Trust Account. After meeting administrative and operating expenses, the Hard-Rock Mining Impact Board allocates the prorated revenue from each mine into a subaccount identified by the county in which the mine is located.

* After determining that a hard-rock mine has ceased operation or has experienced a 50 percent reduction in workforce, the Board designates the affected local government units and impact area.

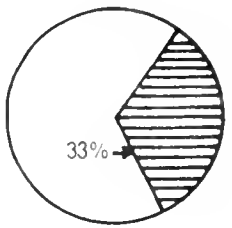
* The Board may make grants or loans from the appropriate county subaccount to designated local government units to help them stabilize mill levies, retire existing debts, or revitalize their tax base and provide employment opportunities through economic development activities.

HARD-ROCK MINING IMPACT BOARD

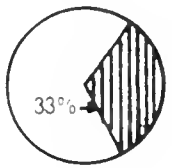
administers

33% OF METAL MINES LICENSE TAX REVENUE → $ → HARD-ROCK MINING IMPACT TRUST ACCOUNT → $ → GRANT LOAN PROGRAM

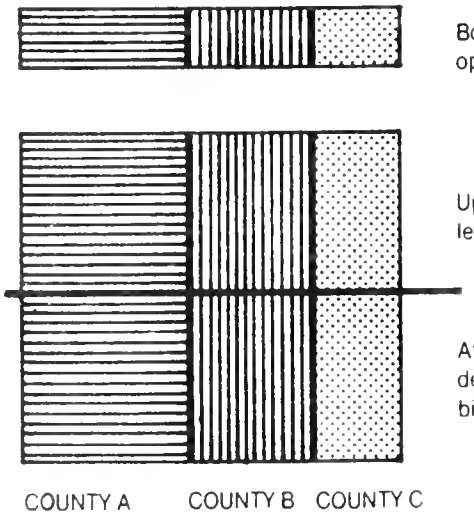
MINE 1, COUNTY A



MINE 2, COUNTY B



MINE 3, COUNTY C



Board administrative and operating expenses

SUBACCOUNTS

Up to 50% to maintain mill levies and retire debt

At least 50% for economic development and job stabilization

1) Mineral developer or potentially affected local government unit requests determination by board.

2) Board Determines
- 50% Workforce Reduction

or
- Mine Closure

3) Following board's determination, local government units request designation by board.

4) Board Designates Affected Local Government Units and Impact Area

5) Designated local government units apply for grants or loans

6) Board Awards Grants or Loans from county subaccount to designated local government units

CHAPTER I

PREPARATION OF AN IMPACT PLAN

INTRODUCTION

As contemplated by the Impact and Tax Base Sharing Acts, a hard-rock mining impact plan reflects what the law requires the plan to contain, what the law intends the plan to achieve, and how the law requires the plan to function. The two major purposes of the impact plan are to enable local governments to provide services and facilities when and where needed as a result of the large-scale mineral development and to ensure that the local taxpayer does not have to bear the increased cost of such services and facilities. The plan operates in the context of the following statutory expectations and constraints:

The Impact Act requires the developer of each proposed new large-scale hard-rock mineral development to prepare a local government economic impact plan. In practical terms, affected local government units help with the preparation of the plan. They review the plan formally upon its completion to evaluate whether any changes need to be made, under procedures provided by statute and rule.

In the plan the developer must identify all increased capital, operating and net operating costs to local governments that will result from the construction and operation of the mine and associated facilities.

The developer must commit to pay all increased capital and net operating costs, by means of property tax prepayments, education impact bonds, grants or other appropriate financing mechanisms. The plan may also provide that the developer will furnish non-financial assistance, which may serve to forestall or reduce increased local government costs or to ensure other benefits. The plan contains a schedule of the developer's impact payments.

Affected local government units may request financial assistance from the developer to help them "prepare for and evaluate" the impact plan. Otherwise, a local government may receive and expend impact payments only to provide services and facilities needed as a result of the mineral development, as identified in the impact plan.

If the plan requires the developer to prepay property taxes, the plan must also provide for future tax credits from the local government unit to the developer, with certain restrictions.

Tax base sharing is triggered if the impact plan projects that, as a result of the mine, increased costs will exceed increased revenues in local government units where the mine is not located. Tax base sharing means that the increase in taxable valuation of the mineral development is allocated among the affected counties, municipalities and school districts. Tax base sharing may create new opportunities for prepayment of taxes and may affect net operating costs.

A plan may specify conditions, in addition to those provided by statute, under which the plan may be amended.

The provisions and implementation of the plan must be consistent with the laws and regulations to which local government units are subject in the exercise of their powers and duties.

The impact plan is a condition of the operating permit issued to the developer by the Department of State Lands. The developer's failure to comply with commitments made in the impact plan results in suspension of the operating permit.

SCOPE OF AN IMPACT PLAN

An impact plan consists of data, analyses, assumptions, projections, proposed actions, and commitments, all of which need to be clearly articulated.

The plan may provide for its own adjustment or amendment. This will enable the developer and affected local government units to revise their commitments in order to respond more appropriately to actual, rather than projected, patterns of population inmigration and distribution and the consequent need for additional services and facilities.

Among the potentially most important characteristics of a functional impact plan are clarity and flexibility: (a) clear statements of the data, assumptions, and projections on which the plan is based; (b) a clear statement of each commitment by the developer or by a local government unit; (b) adequate provisions for monitoring and evaluating the accuracy of assumptions and projections about employment levels, population inmigration and distribution, and the effects on local government services and facilities; and (c) adequate provisions for adjusting and amending the plan.

A variety of factors influence the complexity of an impact plan and the level of financial commitment required of the developer. Among these factors are the timing, size and location of the mineral development; the skills and number of employees needed in relation to the available local workforce; the number and demographic characteristics of the inmigrating population; where they are likely to live; the comparative size of the affected communities and the capacity and condition of existing services, facilities and housing; decisions of the developer regarding employee training and housing; the anticipated severity and duration of the impacts to services and facilities; the anticipated time-lag and disparity between increased costs and increased revenues; and the degree of certainty attributed by the developer and the local government units to the assumptions and projections on which the plan is based.

Among the factors considered in preparing an impact plan are:

(a) the current capacity, condition, and cost of local government services and facilities;

(b) the availability of existing housing and subdivision lots;

(c) the skills and number of employees needed to construct and operate

the mine and associated facilities;

(d) the timing of the development and the need for employees at each phase of its construction and operation;

(e) the number of potential employees available in the local workforce;

(f) the number of people expected to move into the area because of the mine;

(g) their housing needs and preferences;

(h) where they are expected to live (housing availability, community amenities, commuting distances and time);

(i) the type and level of local government services and facilities that will be needed by the mine and by the inmigrating and local populations as a result of the mine;

(j) how and when the needed services will be provided;

(k) how much the additional services and facilities will cost;

(l) when the increased costs will be incurred;

(m) when and how much local government revenues will increase as a result of the mine;

(n) what, if any, net operating cost will result from the development and when it well be incurred;

(o) when and how the developer will pay all increased capital and net operating costs to local government units;

(p) what non-financial assistance the developer will provide and when it will be provided;

(q) how local government units will calculate and provide tax credits for prepaid taxes;

(r) the circumstances under which the plan may be amended or may be adjusted without formal amendment; and

(s) any other provisions or conditions needed to facilitate the implementation, monitoring, and amendment of the plan.

In other terms, the hard-rock mining impact plan combines social and economic impact assessment, impact mitigation planning, local government fiscal impact analysis, and commitments by the developer and the affected local government units. It is at the same time a planning tool, projecting what people think will happen and what they propose to do if it does happen, and a contractual obligation, or commitment, based on what is expected to happen. The commitments in a plan may be fixed commitments, conditional commitments, or commitments to a method of calculation, process or procedure.

REQUIRED AND FUNCTIONAL PROVISIONS OF AN IMPACT PLAN

The Impact Act identifies certain minimal requirements for the content of an impact plan. The Board has summarized these statutory requirements in a single administrative rule, ARM 8.104.203. The rule also sets forth the requirements for the format of a plan. An impact plan must contain all of the applicable information and provisions required by statute and rule. The plan must also contain such information as will be needed for its review, implementation and amendment.

Following is a discussion of the basic statutory and regulatory requirements for the content of an impact plan.

A. Format and Substance

The format and substance of the impact plan are to allow for a ready review and analysis of the plan, its several parts, and their relationship to each other. The impact plan is to contain, at a minimum, (a) that information specifically required by statute, (b) that information necessary to the implementation of statute, and (c) that information necessary to the review and implementation of the plan.

Because the people who prepare an impact plan may not be the same individuals as those who review the plan or those who implement it over time, the plan needs to be a complete, freestanding document, encompassing, to the extent possible, all of the assumptions, provisions and commitments concurred in, or "understood," by the affected parties.

B. List of Affected Local Government Units

The plan is to contain a list of the local government units the developer believes might be affected by the development.

The plan is prepared by the developer with the cooperation of the affected local government units. The governing body of the county is to help the developer identify those local government units that appear likely to be affected by the mineral development.

For impact plan purposes, "local government unit" means a county, incorporated city or town, school district, or any of the following independent special districts: rural fire districts, public hospital districts, refuse disposal districts, and county water or sewer districts. (Impacts to other types of districts, such as rural special improvement districts, are addressed by the governing body of the county or municipality in which the district is located.)

Through the county, affected local government units may request financial or other assistance from the developer to help them prepare for and evaluate the impact plan.

C. Information Required by 90-6-307(1), MCA

As required by 90-6-307(1), MCA, the plan must contain the following information:

1. "a timetable for development, including the opening date of the development and the estimated closing date;"

The timetable identifies when construction is expected to begin, how long the construction period will continue, when the mine and mill are expected to go into operation, and the anticipated closing date of the mine. The timetable typically outlines the employment schedule for the construction and operating workforce, identifying the number of workers needed by skill on a monthly basis from the beginning construction into full operation of the project.

The scheduling of other activities may also be important, such as the timetable for moving large or heavy equipment that could impede traffic or affect county roads or bridges.

The timetable of the development may change after the plan has been submitted for review. The entire project may be delayed, the construction schedule may be accelerated, or other significant changes may occur. If this happens, the developer should notify the affected local government units and the Board. If the changes are major, the developer may need to submit a revised timetable, adjusting or amending the plan. A significant change in the timing of the development may necessitate other changes in the plan.

2. "the estimated number of persons coming into the impacted area as a result of the development;"

The mineral developer and affected local government units must define the population changes associated with the mineral development. Based on this definition, they identify "the estimated number of persons coming into the impacted area as a result of the mineral development." Mineral development means the construction and operation of the mine and associated milling facility; that is, all activities encompassed by the operating permit issued by the Department of State Lands.

The number of persons moving into the area as a result of the development typically includes persons employed in the construction and operation of the mine and mill and their accompanying families, and may include inmigrating persons associated with derivative employment opportunities and others, depending on the definition agreed to by the mineral developer and the affected local government units.

3. "the increased capital and operating cost to local government units for providing services which can be expected as a result of the development;"

In assisting the developer to prepare the plan, affected local government units will be asked to provide data and information about the condition, capacity and cost of existing services and facilities and about the type, condition and location of available housing and subdivided lots. Existing local government documents may contain useful data or information, including annual budgets, community needs assessments, housing studies, facility studies, capital improvements programs, school policy statements, and comprehensive plans.

Workers' housing needs may range from the short-term needs of some construction workers (a matter or weeks or months), to longer term temporary

housing (two or three years), to "mine-life" housing. Short term, temporary needs may be met by recreational vehicle sites, motels, or construction work camps. Mid-range and long-term needs may be met by mobile home parks and conventional housing. Where people live depends partly on local conditions, including the availability of housing and buildable lots, comparative community amenities, and the commuting conditions, time and distance to the mine. The developer may influence where people live by deciding to provide, or not to provide, recreational vehicle and mobile home sites, construction worker housing, or permanent housing or housing sites within a reasonable commuting distance from the mine. Workers' preference for temporary or permanent housing may also be influenced by their perceptions of the probable stability and life of the mine.

In preparing the plan, the developer should work with Local government units to arrive at mutually acceptable data, assumptions and projections about the available workforce, the number and demographic characteristics of the people who will move into the area as a result of the development, when they will arrive, where they are likely to live, and how long they are expected to reside in the area.

Based in part on where people are expected to live, local governments and the developer identify which local government services and facilities will be needed as a result of the development and how they will be affected. Services may be needed by the inmigrating population, by the development itself, or, in some cases, by the existing population as a result of the development. The developer and local government units estimate the level of service needed during each phase of the development, when it will be needed, how it will be provided, and how much it will cost, identifying both capital and operating costs. They may also identify the lead time the local government will require in order to have the facility or service available when and where it is needed.

The severity and cost of impacts depends largely on the number and needs of the inmigrating population; the rate of inmigration; where they live; and the existing ability of affected communities to meet the increased demand for housing, services and facilities. However, even when the development employs a predominately local workforce and very little inmigration occurs, the mine and mill may cause impacts to some local government services and facilities, such as, county roads and bridges and solid waste collection and disposal. The development of the mine and associated changes in the community may also result in impacts affecting some local government services to existing local residents.

4. **"the financial or other assistance the developer will give to local government units to meet the increased need for services."**

Financial assistance from the developer is addressed in more detail in Section D below.

Non-financial assistance may take many forms. For example, the developer may assume full or partial responsibility for upgrading and maintaining the county access road to the mine, conforming to county standards; may enter into mutual aid agreements with rural fire districts; or may provide additional communications equipment to county emergency services agencies.

In some plans, the developer has committed to give assistance to quasi-governmental, nonprofit organizations that provide services such as rural fire protection and emergency medical services, which could be provided or financed by a local government unit. Such assistance includes shared training opportunities, donation of equipment to the nonprofit service provider, or mutual aid agreements with compensation for services rendered by the nonprofit organization on behalf of the development.

The developer and local government units both benefit from another form of non-financial assistance, that is, from the investment of the time and effort required to establish and maintain a good working relationship, growing out of open communications and mutual credibility. By working together in a cooperative and responsive manner, the developer and local government officials may be able to forestall problems or correct them before they assume major proportions. The need to work together continues throughout the impact plan process, from the preparation and review of the impact plan through its implementation and amendment.

D. Developer's Commitment to Pay Increased Costs and Schedule of Payment, as Required by 90-6-307(2), MCA

In the impact plan the developer must commit itself to pay all of the increased capital and net operating cost to local government units that will be a result of the development, as identified in the impact plan, either from tax prepayments, as provided in 90-6-309, MCA, special industrial educational impact bonds, as provided in 90-6-310, MCA, or other funds obtained from the developer, and shall provide a time schedule within which it will do so. The plan may provide for funding from other revenue sources or funding mechanisms if the developer guarantees that the amount to be provided from these sources will be paid.

The plan identifies all capital, operating and net operating costs which will be incurred by local government units as a result of the development. The developer commits to pay all capital and net operating costs. Net operating costs are calculated by subtracting increased revenues resulting from the development from increased operating costs resulting from the development.

The plan must identify the amount, method, purpose and timing of each impact payment:

1. Amount of Payment. The amount of payment must correspond to the increase in capital or net operating cost that will be incurred during the fiscal year for which the payment is made.

The plan may specify a fixed amount of payment; may provide for a conditional payment or conditional amount, contingent on circumstances that will trigger the payment; or may provide that the amount will be calculated by a specified procedure:

(a) The developer might commit to pay the fixed amount of $36,000 in prepaid property taxes to the elementary school district for increased operating costs in the academic year when the mine begins construction;

(b) The plan might provide for a conditional payment, that is, a payment

that will be made only if specific circumstances occur: the developer will prepay $36,000 in property taxes to the school district after more than 10 but fewer than 20 mine-related students have enrolled (the plan might have other provisions for payments triggered by more than 20 students);

(c) The plan might specify the procedure by which the amount of payment will be calculated: for the first year of enrollment of each mine-related student in excess of the total number of mine-related students enrolled during the previous year, the developer will make a grant payment equal to the per student State ANB payment for the same category of student and will prepay property taxes in an amount equal to a prorated share of the district's permissive levy; or

(d) The plan might use a combination of approaches, as appropriate to the magnitude of the anticipated impacts, the budgeting requirements of the local government unit, and the degree of certainty attributed to the projections of increased inmigration and increased costs.

2. Purpose of Payment. The plan must identify the purpose for which each payment is to be made, that is, the service or facility to be provided as a result of the payment. The plan may specify the anticipated level of service or method by which it is expected the service will be provided, but preferably with some built-in flexibility.

A plan may project an increased cost on the basis of the anticipated need to buy and operate a specific piece of road equipment or the anticipated need to hire two additional teachers. While it should identify these anticipated needs, the plan will be more flexible, and will intrude less on the authority and responsibility of the local governing body, if it also specifies that the developer's commitment is not dependent on a specific method of providing a service but is intended to ensure that the local government will provide the needed level of service within the identified cost.

This approach allows the local governing body to revise the method of providing a service, as appropriate. For instance, owing to the distribution of incoming students among various grades, the school trustees might find that one additional teacher and two aides will meet students' classroom needs better than the projected two additional teachers. Even though the local governing body may select a different method of providing classroom instructional services, it remains obligated to provide the quality or level of service anticipated by the plan.

As a matter of policy, unless the impact plan states otherwise, the Board will assume that the basic purpose of the developer's commitment is to enable the local government unit to provide an appropriate level of service when and where the service is needed, and that this does not necessarily mean a commitment, by either the developer or the local government unit, to a specific method of providing the service. This means, for example, that it will be assumed the developer is making an impact payment to ensure adequate year-round road maintenance, rather than to buy a particular piece of road equipment, even though the estimated cost of that piece of equipment was part of the basis for calculating the increased road maintenance costs

resulting from the development.

It also means that, although the local government unit may change the method by which it provides a service, it remains obligated to provide the agreed-upon or appropriate level of service within the amount of the developer's financial obligation. As long as the local government unit provides the needed service and the cost does not exceed the amount of the impact payment, the developer and local government unit may change the method of providing the service through a plan adjustment rather than a formal plan amendment. By contrast, unless the plan specifically provides otherwise, a plan amendment is required if the developer or local government unit want to transfer money from one service category to another, or from one local government unit to another, because such a transfer implies an intention to use the impact payment for a purpose not authorized by the Impact plan.

The developer and local governing body may wish to consider alternative ways of addressing increased capital and net operating costs. In one instance, the developer and an affected local government unit negotiated an exchange of equivalent value between the capital and net operating costs of an enterprise service. (An enterprise service is paid for by user fees rather than by taxes.) In exchange for being absolved of responsibility for future net operating costs, the developer paid a portion of the local government's share of capital costs for upgrading and expanding the affected facility, in addition to its own share. The developer and local governing body estimated that the fees paid by users would not be affected by such an arrangement, although the amounts allocated between capital and operating expenses would differ. The developer preferred the known, fixed payment and the local governing body preferred to receive the up-front revenue and to avoid the time-consuming annual calculation of actual net operating costs. Both were confident that the new residents resulting from the project would generate sufficient revenue to meet operating expenses.

3. Method of Payment. The plan must specify the form or method of each impact payment.

The developer may make impact payments to local government units in the form of property tax prepayments, grants, educational impact bonds, or other financing mechanisms, provided that the increased capital and net operating costs are not shifted to the local taxpayer. Both the amount and method of payment should acceptable to both the developer and the affected local government unit.

An education impact bond may be used to meet the cost of constructing new school facilities needed as a result of the development. The owners of the mineral development and the school district trustees may enter into an agreement for the issuance of an education impact bond. The agreement must provide for a guarantee by the owners of the development for payment of the principal and interest of the bond. The trustees of the school district must levy an annual special tax on the property of the development sufficient to retire the principal and interest of the bond. The bond is not a financial obligation or liability of the district as a whole. It does not affect the debt limit of the district. Interest on such bonds is not subject to state taxes.

Tax prepayment and tax crediting are discussed below in Section E and in Appendix XII.

4. Timing of Payment. The plan must specify when the developer is to make each impact payment.

The schedule under which the developer is to make payments may be based on any time interval that appears appropriate to the developer and the affected local government units. This may be calendar years, local government fiscal years, mine project years, or "impact years" as defined in the plan. How the plan presents the schedule depends partly on how confident the developer and the affected local government units are in the plan's estimated timetable for the development and its projections of population inmigration and distribution.

As illustrated above, some impact payments may be scheduled on the basis of triggering events or circumstances. The plan may also specify a time limit within which the payment will be made, such as, within 60 days of when the local government unit notifies the developer that the triggering event has occurred and payment is requested.

In establishing the payment schedule, the developer and affected local governments may need to consider not only when a service or facility will be needed, but also how much lead time will be necessary if the local government unit is to provide the service or facility at the appropriate time.

F. Tax Prepayment and Tax Crediting

In 1985 the Legislature amended section 90-6-309, MCA, the Act's tax prepayment and tax crediting provisions. However, parties to an impact plan are subject to the statutory provisions that were in effect at the time their particular plan was submitted for formal review.

1. Impact plans submitted **prior to July 1, 1985** are subject to the tax crediting formula found in section 90-6-309(5), MCA in the 1981 Act. Under this formula, each local government unit that has received a tax prepayment is required to calculate annually how much tax credit should be given, if any. The formula considers current budget needs, increased taxable valuation resulting from the development, potential revenues, and historic mill levies. The purpose of the statutory formula is to identify the amount of tax credit that can be provided, if any, without resulting in a mill levy higher than the average mill levy for the three years preceding the development.

Under this 1981 statutory approach, tax crediting is accomplished by reducing the taxable valuation of the mineral development in the jurisdiction providing the tax credit.

2. On or **after July 1, 1985,** an impact plan that calls for prepayment of property taxes must also specify how tax crediting is to be achieved, as provided by 90-6-309(5), MCA.

In amending the language of the Act, the Legislature indicated that its

purpose was to allow local governments and developers to establish their own procedures for calculating and providing tax credits. In making this change, the Legislature did not indicate any intention to change the basic purposes of the Act or the principles underlying the determination of the amount of tax credit appropriate to a given fiscal year. It is a purpose of the Act that increased costs resulting from the development are not to be borne by the non-developer local taxpayer. A plan would be inconsistent with this purpose if it were to provide for tax crediting in a manner that would shift the tax burden, over time, from the developer to other local taxpayers. Such a shift would also conflict with the requirement that the developer pay "all increased capital and net operating cost" to local government units, when such costs are identified in the plan as resulting from the development.

Under the amended Act, a tax credit can be provided only by a dollar for dollar reduction in the developer's tax bill and not by a reduction of the development's taxable valuation.

F. Tax Base Sharing

A plan may indicate that the mineral development will result in increased costs to local government units which cannot tax the development, because the development is located outside their taxing jurisdictions. The occurrence of such a "jurisdictional revenue disparity" triggers the Tax Base Sharing Act. The Tax Base Sharing Act applies only to the increase in taxable valuation of the mineral development which occurs after the operating permit is issued.

If a jurisdictional revenue disparity is identified, the increase in valuation of the mineral development must be allocated among the affected counties, municipalities and school districts. The allocation is based on the place of residence of mineral development employees and their school-age children, as verified in an annual survey conducted by the developer. However, if the initial allocation occurs before the survey is conducted, it reflects employees' place of residence and students' district of enrollment, as projected by the plan. The allocation formula takes into account all employees of the mineral development, both inmigrating employees and local resident employees.

"Mineral development" encompasses the construction and operation of the mine and associated milling facility by the developer, its contractors and subcontractors.

As a result of tax base sharing, the amount of taxable valuation resulting from the mineral development will increase in some local government units and decrease in others. Tax base sharing does not affect the total taxable valuation of the mineral development. However, it may affect the amount of tax actually paid by the taxpayers comprising the mineral development, because the development will be subject to the mill levies of a different set of local government units, each of which will apply its own mill levy to its allocated share of the valuation of the development. Tax base sharing may also affect the net operating costs attributable to the mineral development in each local government unit. As required by the Impact Act, in the impact plan the developer must identify and commit to pay all net operating costs resulting from the development.

Tax base sharing may create the opportunity for the developer to prepay property taxes to local government units in which the mine is not located, rather than paying increased capital and net operating costs only by means of grants. As discussed above, if the plan requires the prepayment of taxes, it must also provide for tax crediting.

Tax base sharing involves counties, incorporated cities and towns, and school districts, but does not affect special districts or statewide mill levies. Jurisdictions that are not subject to tax base sharing continue to tax the development as usual.

The requirements and procedures for tax base sharing are discussed in more detail in Appendix XIII.

G. Definitions.

The Impact Act contains several terms that need to be clearly understood by all parties to the plan and by persons affected by its implementation. The plan must define the following terms in a manner consistent with common usage and appropriate to the specific large-scale mineral development:

1. If property taxes are to be prepaid, the plan must define "start of production," as required for 90-6-309(4), MCA;

2. If property taxes are to be prepaid, the plan must define "commencement of mining," as required for 90-6-309(5), MCA; and

3. All plans must define "commercial production", as required for purposes of 90-6-311, MCA.

As noted in item 4 below, when commercial production begins, the developer must notify the Board and the affected local government units. The date on which commercial production begins initiates a two year time limit for unilateral petitions to amend the impact plan. From when the plan is approved until two years after commercial production begins, either the mineral developer or an affected local government unit may unilaterally petition the Board to amend the impact plan because of "material inaccuracies" in the assessment of impacts. (After that time the plan may be amended only by a joint petition or under conditions specified by statute or in the plan itself.)

One plan defines the beginning of commercial production as the date the developer first ships mineral concentrate from its mill for further processing. Another plan defines the beginning of commercial production in terms of a percentage of full production as projected in its operating plan.

The plan should also define terms that are used in way unique to that plan, such as "impact year," "impact period," or "mine-related student." For example, "impact year one" may mean the local government fiscal year in which the mine begins construction, or it may encompass the remainder of that fiscal year and the entirety of the next fiscal year. Depending on the plan's definition of people moving into the area as a result of the mineral development, "mine-related student," for example, may mean any school-age child who is the son, daughter, ward, or a resident in the household of: (a) a

current mine employee; (b) a current or previous inmigrating employee of the mineral development; (c) any person who has moved into the area and applied for a job at the mine; (d) or any other consistent definition. (Note that definitions for impact plan purposes may differ from definitions for tax base sharing purposes.)

H. Notification of Key Dates or Events

In the plan the developer must commit to notify the Board and the affected local government units within 30 days of each applicable date or event identified in Section G above.

I. Payment Route

As authorized by 90-6-307(8), MCA, the plan should indicate whether the developer will make impact payments directly to the affected local government units or through the Board.

Because of the short turnaround time, interest does not usually accrue on impact payments made through the Board's impact plan pass-through accounts. Nonetheless, because the potential exists, the developer might wish to specify in the plan what disposition is to be made of any interest generated by the pass-through account. The plan may specify that the interest will be credited to the account for use as provided by the plan. Unless the plan provides for allocation of the interest, State law requires that it must be credited to the State's general fund.

Chapter III discusses the implementation of an impact plan, including alternative procedures for making impact payments.

J. Providing for Plan Amendments

As authorized by 90-6-311(1), MCA, the plan may provide for its own amendment "under definite conditions specified in the plan." Such conditions for amendment are in addition to the statutory conditions specified in 90-6-311(1)(a) through (c), MCA.

Recognizing that an impact plan is based on data, circumstances and projections that might change or prove to be inaccurate, the Legislature has provided a method for amending an approved impact plan under certain conditions. The procedure for petitioning to amend an impact plan and the content of the petition are discussed in more detail in Chapters III and V, which discuss the substantive and procedural requirements for implementing and amending an approved plan.

A petition-to-amend an approved impact plan may be submitted under the following circumstances:

1. **The mineral developer or the governing body of an affected county may petition the Board for an amendment to an approved plan if:**

   (a) employment at the large-scale mineral development is forecast to increase or decrease by at least 75 persons,

as determined under 90-6-302(4), over or under the employment levels contemplated by the approved impact plan; or

(b) it becomes apparent that an approved impact plan is materially inaccurate because of errors in assessment and 2 years have not elapsed since the date the facility begins commercial production; or

(c) the governing body of an affected county and the mineral developer join in a petition to amend the impact plan.

2. In addition, the impact plan may provide for its own amendment under definite conditions specified in the plan itself.

The statutory conditions under which an impact plan may be amended may not be adequate or appropriate to a particular impact plan and the needs of the developer and the affected local government units. The plan may provide for its own amendment under conditions that offer more opportunity, but not less opportunity, for the plan to be amended. For instance, the plan may provide that if the number of persons employed at the mineral development exceeds the projected number of employees by at least 50 persons, or if the number of inmigrating employees exceeds the projected number by 25 persons, the plan may be amended.

The plan may authorize any range of amendments, from amending the entire plan, as illustrated in the example above, to amending only certain provisions. The plan may also limit the scope or content of amendments made under conditions specified in the plan. For instance, the plan may specify that the amendment is to address only the incremental increase in net operating costs, that is, those net operating costs that have not already been provided for in the plan.

Following are examples of provisions for limited amendments:

1. If the number of mine-related students enrolled in the elementary school district exceeds the number projected by more than 15 but fewer than 30, or if more than 10 enroll in a single grade, the plan may be amended to ensure adequate compensation to the district for the additional increase in net operating costs resulting from the development.

2. If the number of mine-related students enrolled in the elementary school district exceeds the number projected by more than 29 but fewer than 45, or if more than 15 enroll in a single grade, the plan may be amended to ensure adequate compensation to the district for the increase in capital costs and the additional increase in net operating costs.

3. If the number of mine-related students enrolled in the elementary school district exceeds the number projected by 45 or more within five years after the mine begins construction or three years after the mine begins commercial production, the plan may be reevaluated and amended as necessary to meet the increased service and facility needs and costs resulting to the school

district from the mineral development.

The plan provides for its own amendment in order to supplement the statutory circumstances under which an amendment may occur. In each of the situations described above, the plan not only authorizes its own amendment under specified conditions, but to some extent the plan also defines the scope and content of the allowable amendment. A plan may limit the scope or content of an amendment only if the amendment is authorized solely under the conditions specified in the plan itself. The plan cannot impose any limitation on the scope or content of an amendment specifically authorized by statute.

A formal amendment is required to change the developer's obligation under the plan, whether the change represents an increase or decrease in assistance, unless a specific change is provided for in the plan. As discussed below, the plan may provide for specific adjustments under specific circumstances. Essentially, an adjustment is a specific change contemplated by the plan and agreed to in advance by the parties to the plan. As such, it requires documentation but not a formal amendment.

Chapters III and V discuss the substantive and procedural requirements for amending a plan. All petitions to amend a plan must explain the need for the amendment and must describe the proposed corrective action. Appendix XIV contains a sample format for a petition to amend an impact plan. Appendix V illustrates provisions for monitoring a plan and specific conditions under which the plan may be amended. The following section discusses issues related to monitoring, adjusting and amending a plan.

CERTAINTY AND FLEXIBILITY IN AN IMPACT PLAN

Mineral developers and local government units often seek a balance between the **certainty** inherent in the developer's commitment to provide a specific impact payment or type of assistance and the **flexibility** to adjust or amend a plan, so that the assistance and mitigation measure will correspond to actual impacts, as opposed to projected impacts.

Impact plans have sought various ways of achieving this balance between certainty and flexibility. One of the ways is through "if...then" provisions, such as those illustrated in the preceding section. The "if...then" approach can also provide more specificity or certainty than is suggested by the previous examples. The plan may provide that if a specific circumstance occurs, then a specific commitment will be triggered or specific changes will be authorized. This allows the developer and local government units to make adjustments to the plan without the necessity for formal amendment.

If the plan identifies the specific responsibility and commitment of the developer under alternative potential scenarios, the plan can be adjusted to correspond to the actual circumstances. For example:

> The plan contains alternative, but specific, provisions for each of several ranges of enrollment in the elementary school: (a) if there are 1 to 20 inmigrating students, then the need and cost will be... (as specified) and the developer's commitment will be...(as specified); (b) if there are 21 to 35 net inmigrating students, then the (incremental or total) need and cost will be... (as specified and the developer's commitment will be... (as

specified); (c) if there are 36 to 45 net inmigrating students, then the (incremental or total) need and cost will be... (as specified) and the developer's commitment will be... (as specified).

An adjustment, rather than a formal amendment, is sufficient to implement specific "if...then" provisions and commitments, such as those illustrated above, where **both the conditions and the resulting commitment are specified.** Because the adjustment involves changing the plan in some way specifically provided for in the plan itself, the potential change is essentially agreed to in advance by the mineral developer and the affected local government unit. (When a plan is adjusted, the developer and the local government must confirm the adjustment in writing and provide a signed copy to the Board. This is necessary because the parties to the plan and the Board need to know what commitments are in effect.)

An amendment, rather than an adjustment, is required when the "if...then" provisions merely encompass the scope of a potential change, as illustrated in the discussion of plan amendments. Unless the plan specifically provides otherwise, a formal petition to amend the plan is necessary to define conditional commitments or to change specific commitments by the developer.

Any "if...then" provision seems to presuppose that the developer and the affected local government units will engage in some degree of monitoring of the impact of the development. For instance, if provisions of the plan are based on alternative ranges of enrollment of mine-related students, the plan should also provide that the developer and school district will develop and carry out a procedure for monitoring the number of inmigrating students.

Monitoring and flexibility may be particular importance (a) when there is a high degree of uncertainty in the assumptions and projections on which the plan is based, or (b) when the plan projects major impacts and a significant commitment by the developer. The plan serves little purpose if it does not ensure that local governments are able to meet the impact community's needs for local government services and facilities. Both the community and the developer benefit when their respective resources are used appropriately and to good effect, and misallocation of their resources is costly in both financial and human terms.

Persons with experience in mitigating impacts from natural resource development advise that monitoring should be kept as simple as is consistent with the information needed to effect appropriate changes to the plan, or, conversely, to verify its adequacy. They also suggest that existing reporting requirements, both for the developer and for local governments, are often sufficient to provide most of the needed data, without having to duplicate efforts. The key, they suggest, is to identify in advance who will assemble the information, who will analyze it, and how and by whom decisions will be made based on the results. A commitment to monitoring can be addressed in the impact plan.

FORMAT OF AN IMPACT PLAN

The Hard-Rock Mining Impact Board has adopted the following rule, ARM 8.104.203, concerning the format of an impact plan:

(1) The format and substance of the plan shall allow for a ready review and analysis of the plan, its several parts and their relationships to each other.

(2) The format of the plan shall contain the following elements:

(a) the name, address and phone number of the developer's contact person;
(b) a brief summary of the impact plan;
(c) a list of the local government units which the developer believes might potentially be affected by the development;
(d) a table of contents;
(e) numbered pages throughout.

(3) The plan shall be bound in a manner that will allow for the ready removal and insertion of pages.

At a minimum, the summary of the plan must contain the schedule of the developer's commitment to provide financial or other assistance. The schedule and summary must identify for each affected local government unit the proposed financial and other assistance, including the amount, purpose, method and timing of each impact payment.

ASSISTANCE TO LOCAL GOVERNMENTS TO PREPARE FOR AND EVALUATE THE IMPACT PLAN

Recognizing that local government units will incur additional costs and may need assistance to help them prepare for and evaluate an impact plan, the Legislature provided that:

> Upon request of the governing body of an affected unit of local government, the mineral developer, prior to the end of the 90-day review period, shall provide financial or other assistance as necessary to prepare for and evaluate the impact plan. The governing body of the affected county must contract with the developer to obtain the requested financial assistance for each unit of local government within the county. Any disbursements to a unit of local government under this subsection shall be credited against future tax liabilities, if any.

If the developer prepays taxes to help local government units "prepare for and evaluate the impact plan," the plan should take the required tax credit into account when projecting revenues from the development for purposes of calculating net operating costs. Further, the developer and affected local government units need to decide whether this tax prepayment, which is paid before the plan is approved, is to be credited in the same manner as taxes that are prepaid after the plan is approved, under section 90-6-309, MCA. This section requires the plan to provide for the crediting of taxes that have been prepaid by the developer as specified in an approved impact plan.

As provided by 90-6-323, MCA, a local government unit may budget and expend money received from a mineral developer under the provisions of the Impact and Tax Base Sharing Acts. If the budget has been adopted for the fiscal year in which the developer is to make a payment, the governing body may amend its budget by a majority vote to provide for the receipt and expenditure of the developer's payment. This authority applies to financial assistance from the

developer to help local governments prepare for and evaluate an impact plan, as well as to payments made under the plan itself.

SUMMARY

The statutes and rules cited above identify both the required elements of an impact plan and other features of a plan that may be necessary or appropriate for its review and implementation. The appendices contain further information and references related to fiscal impact plans. ARM 8.104.203 serves as a basic checklist of statutory and regulatory requirements for an impact plan.

In 1982, at the request of mineral developers and local government representatives, the Board adopted a policy outlining the type of information that may be necessary for a complete impact plan. See the "Formal Statement of Policies and Guidelines" in the Reference Section. The Board recognizes that, in practice, each plan will be unique, in both organization and content, reflecting the characteristics and concerns of the proposed mining project and the communities it affects.

Subsequent to adopting the plan outline, the Board has approved several actual impact plans. Persons preparing or reviewing impact plans may wish to refer to these approved plans for further examples of the possible form and content of an impact plan. A copy of each approved plan is available for public review at the Board's office in Helena.

Persons preparing or reviewing a proposed impact plan may also wish to discuss these approved plans with the mineral developers and local government units that are parties to them, in order to find out what has or has not worked well as the plans have been implemented.

In the long run, the benefit of the time, effort and money invested in the preparation and implementation of the plan lies in the successful mitigation of local government impacts from the development, which in turn contributes to a more stable workforce for the developer. The ability and willingness of the affected local government units and the developer to work together cooperatively exerts a major influence on the success of the impact planning and mitigation process.

The work of both the developer and the affected local government units begins prior to the actual preparation of the plan and extends through its implementation. Each begins by assembling and analyzing data and information necessary to the plan. Using the data and their knowledge of the mining project and the local area, the parties arrive at reasonable and mutually acceptable assumptions, projections, impact mitigation provisions, and financial and other commitments which constitute the impact plan.

After the plan has been prepared, the developer submits it to the affected local government units for their formal review and to the Board. Following the review of the plan and the resolution of any disagreements, the plan is approved.

After the plan is approved, affected local government units and the developer begin the ongoing process of implementing the plan; making payments; providing needed services and facilities; allocating taxable valuation; calculating and

providing tax credits; monitoring to determine actual population inmigration and distribution and impacts; and adjusting and amending the plan, as necessary.

Chapter II discusses the formal local government review of an impact plan and the guarantee obligations of the developer after the plan is approved. Chapter III discusses the implementation and amendment of an approved impact plan.

CHAPTER II

REVIEW AND APPROVAL OF AN IMPACT PLAN

INTRODUCTION

As discussed in the previous chapter, the Hard-Rock Mining Impact Act requires the developer of each proposed new large-scale hard-rock mine to prepare an impact plan that describes "the economic impact" the mineral development will have on local government units in the area. Affected local governments cooperate with the developer in preparing the impact plan. When the plan is completed, the developer formally submits it to the affected local governments for their review and to the Board. This chapter discusses the formal review and approval of an impact plan, as well as other requirements that follow upon the plan's approval.

Both the mineral developer and the affected local government units are responsible for ensuring that the proposed impact plan complies with the statutory, regulatory and functional requirements for an impact plan and that the plan is consistent with the purposes of the Act. The core requirements for an impact plan are as follows:

> The purpose of the plan is a) to enable local government units to provide services and facilities when and where they are needed as a result of a new large-scale mineral development, and b) to ensure that local taxpayers will not be burdened with increased local government costs resulting from the new mineral development.
>
> The impact plan identifies all increased capital, operating and net operating costs for local government services and facilities needed as a result of the mineral development. In the plan the developer commits to pay to affected local government units all identified increased capital and net operating costs resulting from the development. Payment may be through the prepayment of property taxes, education impact bonds, grants, or other acceptable financing mechanisms. The plan also identifies other assistance the developer will provide.
>
> The plan contains a schedule showing when the developer will make payments and provide other assistance.

An impact plan may be relatively simple or fairly complex, but it must comply with all statutory and regulatory requirements of the Impact and Tax Base Sharing Acts, as reflected and embodied in ARM 8.104.203. In addition, the plan must be consistent with other statutes and regulations to which local governments are subject in the exercise of their powers and duties. A plan should contain such provisions as may be necessary or appropriate to its implementation and should not contain any provisions that would impede its implementation.

Before the plan is submitted for formal review, the developer and affected local government units must determine how many copies of the plan will be needed for review and implementation. The developer must submit a sufficient number of copies to allow the plan to be reviewed by appropriate personnel on behalf of each affected local government unit and by the interested public.

Public copies are usually made available through the county's cooperative extension office or the public library, or both. In some rural areas, public review copies may be made available through the school. The Board requires 12 copies, several of which go to other agencies and one of which remains available for public review.

While the plan is in preparation, and again when the draft is substantially complete, the developer may wish to invite affected local governments to review the draft informally, prior to the formal review. Informal review provides additional opportunity for both the developer and the affected local government units to identify and resolve potential problems and to refine the details of the plan, without the expense and time constraint associated with the formal review process.

Review of the submitted impact plan is entirely a local responsibility. Persons who review the proposed plan will evaluate whether it contains what is required and whether, when implemented, it will do what is needed. Persons conducting this evaluation may also wish to refer to Chapters I and III for information concerning the format, content and function of an impact plan. The review of an impact plan is discussed below and the procedure is outlined in Chapter V.

The Impact Act treats the preparation and review of an impact plan as a potential impact in its own right. To enable local governments to participate fully in the preparation and review of the impact plan, the Act provides that affected local government units may request financial or other assistance from the developer to help them "prepare for and evaluate the impact plan." Local governments request the developer's assistance through the county, which contracts with the developer on behalf of local government units within the county. Such financial assistance constitutes a tax prepayment by the developer to the local government unit receiving the assistance. The developer must provide the requested assistance prior to the end of the 90-day review period.

The impact plan may be submitted for formal review any time after the developer has applied for its operating permit from the Department of State Lands (DSL). It is assumed that the impact plan preparation, review and approval process will run roughly concurrently with the permit application process. If DSL prepares an environmental impact statement (EIS), the Department is to cooperate with local government units to prevent duplication of effort in data collection. Baseline studies and assessments prepared for DSL may be useful in the preparation and review of the impact plan. The EIS itself provides a broad-scope assessment of social and economic impacts within the impact area, while the impact plan focuses on the service, facility and fiscal impacts on local government units.

THE IMPACT PLAN REVIEW PROCESS

The developer submits the proposed plan simultaneously to the Hard-Rock Mining Impact Board and to all affected local government units identified in the plan. The developer may submit to the county, and the county may distribute, all copies of the plan designated for local government units. Alternatively, the developer may mail or hand-deliver the plan to each affected local government unit, or the developer and county may work together to distribute

the plan.

When it receives the plan, an affected local government unit is to provide the developer with a signed receipt, noting the date and the number of plans received. The developer files this proof of submission with the Board.

When the county receives the plan, the county governing body must publish notice of the plan's receipt in a newspaper of general circulation in the county. The Board requests that the notice appear in a large, readable format.

Affected local government units have 90 days within which to review the submitted plan. The 90-day review period begins the day after the plan is received by all affected parties and extends to the 90th day, or if the 90th day is a Saturday, Sunday or holiday, to the next day which is neither a weekend or holiday. Upon receipt of all proofs of submission from the developer, the Board will send a letter to all parties to the plan, confirming the final date of the review period.

During the 90-day review period, the county must hold a public hearing on the proposed impact plan. The hearing is for the benefit of all local government units and persons affected by the proposed impact plan. Affected citizens and other local government officials may express their concerns about the plan during this hearing. They may also wish to communicate their concerns directly to the governing body of the appropriate local government unit, because with respect to the plan only that governing body may act on behalf of the local government unit and the people it serves. (The fact that the county is required to hold a hearing does not prevent other local government units from holding their own hearings, if they should wish to do so.)

During the review period, a proposed plan may be changed by one of two procedures. By mutual consent, the developer and the governing body of the affected local government unit, in writing, may modify the plan, or the governing body of an affected local government unit may file a formal objection to the plan with the Board.

It no objections are filed during the 90-day review period or a 30-day extension of this period, or if all objections are resolved by negotiation between the developer and the affected local government units, the plan is automatically approved. If any objections remain unresolved at the end of the negotiation period, the Board will adjudicate these disputes.

An affected local government unit may request that the Board grant one 30-day extension of the 90-day review period. If there is a reasonable basis for the request, the Board must grant the extension. Only the local government unit or units that request an extension may negotiate modifications or file objections during the additional 30 days. However, other local government units may respond to a modification or objection that might affect them.

In reviewing a proposed plan, local governments should as a number of questions, including:

1. Is the plan based on accurate data and reasonable assumptions?
2. Does the plan adequately identify all increased service and facility

needs and costs likely to result from the mineral development?

3. Has the developer committed to pay all increased capital and net operating costs in a timely manner and in a way that ensures that these costs will not be shifted to other local taxpayers?
4. Does the plan provide adequately for its implementation and amendment?
5. Does the plan comply with all statutory and regulatory requirements of the Hard-Rock Mining Impact Act and the Property Tax Base Sharing Act? For example, if the plan requires the developer to prepay property taxes, does the plan also provide for tax crediting in a way that does not shift the burden of cost to the local taxpayer?

Tax base sharing will occur if the plan projects increased capital or net operating costs resulting from the mineral development in one or more local government jurisdictions in which the mine is not located. The potential for tax base sharing affects the impact plan in several ways. For tax base sharing purposes, as well as impact plan purposes, the plan will need to project:

1) the increase in taxable valuation expected to occur each year after the mine receives its operating permit, as compared with the valuation that year;

2) where all mineral development employees, both local and inmigrating, and their school-age children are expected to reside;

3) based on the formula for allocating taxable valuation, the amount of increased valuation each affected local government is expected to receive; and

4) how the anticipated taxable valuation will affect net operating costs.

As a result of tax base sharing, those local government units in which the mine is located may receive less increase in taxable valuation than they would have without tax base sharing, which means less tax revenue from the development and may mean higher net operating costs. Local government units in which the mine is not located will receive more taxable valuation than they would have without tax base sharing, which means more tax revenue and lower net operating costs.

The developer and the affected local government units are responsible for ensuring that the plan is complete, that it is consistent with the purpose of the Act, that it complies with all statutory and regulatory requirements, and that it is a functional document. Nonetheless, despite the best, good-faith efforts of all parties to the plan, actual impacts may differ from projected impacts. To a large extent, the flexibility that allows local governments to respond to actual impacts will derive from two factors: (a) the plan's provisions for its own adjustment and amendment, and (b) the ongoing, cooperative working relationship between the affected local government units and the mineral developer.

HOW TO CHANGE AN IMPACT PLAN AFTER IT HAS BEEN SUBMITTED FOR REVIEW: MODIFICATIONS AND OBJECTIONS

Only the governing body of the affected local government unit may agree to

modify the submitted plan, file an objection, or agree to the negotiated resolution of an objection on behalf of that local government unit, its taxpayers, and the people it serves.

As noted above, during the formal 90-day review period, or a 30-day extension, the submitted impact plan may be changed only through one of the following two procedures.

1. Modifications. The mineral developer and the governing body of the affected local government unit may negotiate a mutually acceptable modification of the submitted plan. Either the mineral developer or an affected local governing body may initiate a modification. If more than one local government unit is affected by a proposed modification, the modification must be concurred in by the governing body of these units.

A proposed modification must be submitted in writing to the Board and to all affected local government units identified in the plan. The official copy of the modification submitted to the Board must bear the signatures of the developer's authorized representative and the governing body of each local government unit that is affected by the modification.

As an exception, if the modification involves only the format of the plan, the governing body of the county may act on behalf of all affected local government units in agreeing to the modification. However, the governing body of the county may not act on behalf of other local government units if the modification affects the substance of the plan.

A modification submitted less than 30 days before the end of the review period must carry with it a request from the local governing body for an extension which allows a 30 day review of the modification by all affected local government units identified in the plan.

A modification must comply with all statutory and regulatory requirements, including those found in 90-6-307, MCA; ARM 8.104.203, concerning format and content of an impact plan, and ARM 8.104.213, concerning modification of a plan.

2. Objections. If an affected local government unit disagrees with something in the plan, or if it objects to the fact the plan has omitted something that should have been included, the governing body may file a formal objection with the Board.

An objection may be filed only by the governing body of the affected local government unit.

Any affected governing body may file objections during the 90-day impact plan review period. During a 30-day extension to the review period, only the governing body that requested the extension may file an objection.

An objection to some feature of the plan should not be regarded as an objection to the mining project itself. An objection is the mechanism provided by law to ensure affected local government units that the issues about which they are concerned will be addressed and in some manner resolved, either through their negotiations with the developer or through adjudication

by the Board.

The filing of an objection need not interrupt the efforts of the local government unit and the developer to negotiate a resolution to the disputed issues.

A formal "objection" differs from a "modification" in two important ways. When a formal objection is filed:

a) the developer and the local government unit may continue their negotiations on the disputed issue beyond the end of the 90-day review period; and

b) if the developer and local government unit do not arrive at a mutually acceptable solution, the disputed issues will be adjudicated by the Hard-Rock Mining Impact Board.

If an objection is filed, negotiation on the disputed issues may continue for 30 days after the end of the formal 90-day review period. During this 30-day negotiation phase, the developer and the affected local government unit, acting jointly, may petition the Hard-Rock Mining Impact Board to extend the negotiation period for the length of time specified in their petition.

In filing an objection, the governing body must comply with certain statutory and regulatory requirements: 90-6-307, MCA; ARM 8.104.203 and ARM 8.104.207 through 8.104.209. The basic format and content requirements for a formal objection to a proposed impact plan are as follows:

8.104.207 CONTENT OF OBJECTION TO PLAN (1) An objection to an impact plan submitted to the board shall contain or show:

(a) the name(s) of the developer(s), the project and the impact plan;
(b) the date the objection is submitted;
(c) the name of the local government unit(s) raising the objection;
(d) the government unit's contact person(s) name, address, phone;
(e) the name of the local government unit(s) affected by the objection;
(f) the specific elements of the plan being objected to, giving the page number(s);
(g) the substance of the objection;
(h) the reasons for the objection;
(i) supportive data, information or analysis;
(j) references to other related portions of the plan (giving page numbers), such as;
    (i) analysis of employment and population;
    (ii) analysis of location, nature, extent and cost of impact;
    (iii) proposed mitigation measure;
    (iv) proposed timing and cost of mitigation measure;
    (v) proposed method, amount, and source of financing of the mitigation measure;
(k) additional relevant information;
(l) the objector's proposal for resolving the disputed issues;
(m) a resolution dated and signed by the governing body of each objecting unit of local government confirming that the above statements appropriately reflect their reviews and concerns.

A format outlining the information required in an objection is attached as Appendix VII.

By the end of the 30-day negotiation period, or its extension, the developer and affected local government units must notify the Board in writing of the outcome of their negotiations and indicate which objections have been resolved and which remain in contention. The developer must provide the Board with copies of any amendments to which the developer and affected local government units have agreed. The official copy must bear the signature of the developer's designated representative and of the chairman of the governing body of each local government unit affected by the amendment, and the chairman of the governing body of the county, verifying their concurrence in the amendment.

If any issues encompassed by the objection remain unresolved at the end of the negotiation period, the Board will adjudicate the remaining issues. The Board will hold a public hearing in the most affected county. The hearing addresses only the disputed issues, not the plan as a whole, except as it is relevant to those issues. Within 60 days after the hearing, the Board will adopt its findings. The Board may amend the plan as it deems appropriate to resolve the disputed issues. The Board serves its findings and amendments on all parties to the plan. The Board then approves the plan, with its amendments, if any.

The developer or an affected local government unit may appeal the decision of the Board to the district court in the judicial district in which the Board held its public hearing.

The preparation and prosecution of a formal objection may result in additional expenses to a local government unit. However, if the Board or a court upholds the objection and issues some remedial order, the developer must pay the affected local government unit's "reasonable costs and attorneys fees" associated with the filing of the administrative or judicial appeal. This requirement applies to both objections filed to original plans and objections to a proposed plan amendment.

After an impact plan has been formally submitted for review, the plan can be changed only with the consent of all parties affected by the change, except in the following situations: (a) the county may concur in changes to the format of the plan on behalf of all local government units in the county, provided the change does not affect the substance of the plan; and (b) the Board may adjudicate objections to the plan and may amend the plan to resolve the disputes.

COMMUNICATIONS WITH BOARD MEMBERS AND STAFF DURING THE FORMAL REVIEW PERIOD

In recognition of its dual administrative and quasi-judicial roles, the Board has adopted the following rule concerning communication by affected parties with Board members prior to the approval of the plan and with staff during the formal review period:

(1) No representative of any party to the plan may communicate with any board member outside the context of a public meeting on any issue related to the plan until the plan has received final approval.

(2) During the 90-day review period and the 30-day negotiation period the board's staff may not communicate with any party concerning the substance of a plan. However, the staff may at any time either on its own initiative or in response to a request, provide information concerning the technical compliance of a plan with statutes and board rules and the plan review process provided that the information does not relate to the substance or merits of a particular plan. The staff shall maintain a log of any such contact.

AFTER THE PLAN IS APPROVED

Written guarantee.

After the plan is approved, the developer must submit a written guarantee to the Board and to the Department of State Lands, stating that the developer will comply with all commitments made in the plan. When the Board receives of the written guarantee, it will notify the Department that the impact plan has been approved. Approval of the impact plan and continued compliance with its terms are conditions of the developer's operating permit. If the developer fails to comply with the requirements of the plan or of the Act, the Board is to notify the Department, and the Department must suspend the developer's operating permit.

Financial guarantee.

In addition, if the approved plan requires the developer to prepay property taxes, the developer must provide the Board with a financial guarantee, acceptable to the Board, to assure that the prepayments will be made as required by the plan. The financial guarantee must be made through a third-party financial institution and must meet the basic criteria provided by ARM 8.104.204. The Board must approve the financial guarantee before an affected local government unit needs to incur expenses in the implementation of the approved impact plan.

The Board will determine on a case-by-case basis what constitutes an appropriate mechanism for the third party financial guarantee. For reference, the Appendices include two sample financial guarantees, one a letter of credit, the other an escrow agreement. The letter of credit served as the financial guarantee for a more complex plan with a longer period of active implementation and a number of contingency provisions. The escrow agreement served as the financial guarantee for a less complex plan that anticipated fewer impacts over a shorter period of time.

SUMMARY

All new large-scale mineral developers and affected local government units must comply with the impact plan preparation and review requirements of the Impact Act and, if applicable, the requirements of the Property Tax Base Sharing Act.

Some mineral developments will have little or no impact on local government services and facilities, particularly if they are located in areas of high unemployment with a large, available and trained or trainable local workforce and sufficient housing and service capacity to absorb a relatively small

inmigration. Other large-scale mineral developments may have a considerable effect on local government services and facilities. Consequently, some impact plans will be fairly brief and simple documents, while others, of necessity, will be lengthy and complex.

Each plan will be unique, just as each mining project, each set of circumstances, and each affected local government unit is unique. However, regardless of the magnitude or complexity of the identified impacts, each plan must comply with the statutory and regulatory requirements summarized in ARM 8.104.203. Those persons who participate in the preparation and review of an impact plan know their own situations best, and, within the bounds of statutory and regulatory requirements, are best able to determine what is needed for the plan and for its review.

In reviewing a proposed plan, local governments consider (a) the reasonableness of the plan's data, assumptions, and projections; (b) the adequacy of its provisions for addressing local government service and facility needs and costs; (c) the adequacy of its provisions for its implementation and amendment; and (d) its completeness and compliance with statutory and regulatory requirements.

If no objections are filed, the plan is automatically approved at the end of the 90-day review period.

If objections are filed and cannot be resolved by negotiation between the developer and the affected governmental unit, the Board holds a public hearing and adjudicates the dispute. The Board adopts its findings within 60 days after the hearing, amends the plan if amendments are needed, and approves the plan as amended.

If the approved plan indicates that the development will result in increased local governmental costs for taxing jurisdictions other than those in which the mine is located, the Tax Base Sharing Act will be triggered. This means that the increase in the taxable valuation of the mineral development will be allocated among the affected municipalities, counties and school districts. If tax base sharing will occur, the impact plan should take this fact into account, in order to assure that the developer, as required, identifies and commits to pay all increased net operating costs resulting from the development.

After the plan is approved, the developer must submit to the Board the required written and financial guarantees.

The mineral developer, the governing body of the county, or both, may petition the Board to amend an approved plan, under conditions specified by statute or by the impact plan itself. The county governing body may petition on its own behalf or at the request of another affected local government unit.

To achieve a desired balance between flexibility and certainty, the plan may also provide for its own adjustment, as discussed in the Chapters I and III, concerning the preparation and implementation of an impact plan.

Compliance with an approved hard-rock mining impact plan is a condition of the operating permit issued by the Montana Department of State Lands to each

large-scale mineral developer that applies for an operating permit on or after May 18, 1981. The Board is required to notify the Department of State Lands of any failure by the developer to comply with commitments made in an impact plan or with the requirements of the Impact and Tax Base Sharing Acts.

CHAPTER III

IMPLEMENTATION OF AN APPROVED IMPACT PLAN

INTRODUCTION

The implementation of an approved impact plan requires both cooperation between the mineral developer and affected local government units and their understanding of the purposes and requirements of the Impact Act and the Tax Base Sharing Act.

The approved hard-rock mining impact plan identifies the additional need for local government services and facilities resulting from the proposed large-scale mineral development. The plan projects the anticipated increase in capital, operating and net operating costs to local government units. Large-scale mineral developers and affected local government units prepare, review and implement hard-rock mining impact plans in order (a) to ensure that local government services and facilities will be available when and where needed as a result of the development and (b) to ensure that the non-developer local taxpayer will not be burdened with the increased costs.

The developer commits to pay all increased capital and net operating costs resulting from the development, as identified in the approved plan. The developer may also agree to provide other assistance. The plan contains a schedule of when financial and other assistance will be made available. Some commitments may be contingent upon the occurrence of specific events or circumstances.

The developer's commitments reflect projected local government needs, costs and revenues. These projections are based on data and assumptions which may prove to have been inaccurate, despite everyone's best efforts, or which may change as circumstances change. Recognizing this, the Impact Act specifies that the plan may provide for its own amendment or may be amended under circumstances describe by the Act.

If the approved impact plan identifies a "jurisdictional revenue disparity," the Department of Revenue must allocate the increase in taxable valuation of the mineral development that occurs after the permit is issued, as provided by the Property Tax Base Sharing Act.

If the plan provides for the developer to prepay property taxes, it must also provide for tax crediting, within certain limitations.

The implementation and amendment of an impact plan are influenced by several factors, including: (a) the unique features, adequacy and accuracy of the approved plan; (b) the actual timetable and employment levels of the development; (c) the actual number, demographic characteristics, and settlement patterns of the inmigrating population; (d) the requirements of the Hard-Rock Mining Impact Act and the Property Tax Base Sharing Act; (e) the statutes and regulations to which local government units are subject in the exercise of their powers and duties; and (f) the ongoing cooperation of the affected local government units and the large-scale mineral developer.

As a condition of the mine's operating permit, the developer must comply with

the impact plan review and implementation requirements of the Impact and Tax Base Sharing Acts, including compliance with commitments made in the approved impact plan.

BEFORE THE PLAN IS IMPLEMENTED: THE WRITTEN GUARANTEE AND THE FINANCIAL GUARANTEE

After a plan is approved, but before it may be implemented, the developer must submit a written guarantee to the Board and to the Department of State Lands. The developer must guarantee to comply with its commitments within the time schedule specified in the approved impact plan. The Department may not release the operating permit until the plan has been approved and both the Board and the Department have received the written guarantee. Following approval of the impact plan and upon receipt of the developer's written guarantee, the Board will notify the Department in writing that the plan has been approved and the guarantee received.

If the plan requires the developer to prepay property taxes, the developer must also provide a financial guarantee to the Board, assuring that the tax prepayments will be made as needed to cover local government expenditures necessitated by the impacts of the development. The guarantee is made through a third-party financial institution and must meet the basic criteria established by the Board in ARM 8.104.214. The guarantee must be approved by the Board before affected local government units incur expenses in implementing the impact plan. If the developer defaults on its commitment to prepay taxes, the guarantee enables the Board to make the required payments in the developer's stead. The Board will determine on a case-by-case basis what constitutes an appropriate mechanism for the third-party financial guarantee. Appendices IX-A and IX-B provide examples of two financial guarantees, a letter of credit and an escrow agreement.

BUDGETING AND ACCOUNTING: BUDGET AMENDMENTS, THE IMPACT FUND, PREPAID TAXES

The timing of the implementation an impact plan depends on when the plan is approved, when the operating permit is issued, and when the developer decides to begin construction on the mining project, as well as on provisions of the plan itself. This means that the implementation of an impact plan may begin in the middle of a fiscal year, after an affected local government unit has formally adopted its budget. Recognizing this, the Act provides:

> If a payment is requested or received after the adoption of the budget for the fiscal year in which the payment is to be expended, the governing body of the local government unit may by a majority vote amend its budget to provide for the receipt and expenditure of the payment.

Each local government unit that will be receiving impact payments from a large-scale mineral developer pursuant to an approved impact plan must establish an impact fund in its budget. The impact fund must be consistent both with the provisions of the approved impact plan and with the jurisdiction's budgeting and accounting system. For instance, the county's impact fund budget might contain a line item for maintenance of the county access road to the mine and another line item for additional communications equipment for the sheriff's department. The accounting numbers for these

budgeted expenditures should correspond to accounting numbers for similar line items in the county's regular budget. This will give the local government unit an impact fund budget distinct from but attached to its regular budget. The local government unit will be able to identify impact costs, non-impact costs and total costs for similar budgeted expenditures.

Local government units using the BARS system may wish to refer to Appendix X, the impact fund budget prepared by Stillwater County in cooperation with the Local Government Services Bureau of the Department of Commerce.

Impact payments are subject to the same budgeting and accounting requirements as any other local government revenues, except that:

1. Property tax payments are usually allocated among all funds within the taxing jurisdiction. In contrast, all impact payments, including property tax prepayments, are to be deposited only into the impact fund and are to be expended only for the services or facilities specified in the impact plan.

2. Tax prepayment, tax crediting and tax base sharing involve some special considerations, as discussed below and in the appendices.

Upon request, the Local Government Services Bureau, Local Government Assistance Division, Montana Department of Commerce will provide assistance in budgeting and accounting for impact payments.

Jim Courtney, Supervisor
Accounting and Management Systems
Local Government Services Bureau
Department of Commerce
Capitol Station
Helena, Montana 59620-0401
(406) 444-3010

IMPACT PLAN PAYMENTS

The original Impact Act required the developer to make all impact plan payments through the Board. This procedure applies to all approved plans submitted prior to July 1, 1985, including plans for the CoCa Mines, Inc. Hog Heaven Project; the Stillwater Mining Company Nye Project; and the Homestake/ACNC Jardine Joint Venture Project.

In 1985 the Act was amended, requiring the impact plan to specify whether the developer will make impact payments "directly" to the affected local government units or through the Board.

If payments are to be transmitted through the Board, the Board will establish a pass-through subaccount for the impact plan and will credit each impact payment to that subaccount. With appropriate documentation, the developer may include multiple impact payments in a single check to the Board. The Board makes individual payments from the pass-through account upon request of the affected local government unit. If any interest accrues on money in a pass-through account, the interest will be credited to the pass-through account to be used as provided in the impact plan. (If the plan makes no

provision for the interest, the interest is credited to the State general fund.) Payment through the Board requires one extra step in the payment process, but provides additional assurance to both the developer and the affected local government unit that payments will be made and expended as provided by the impact plan.

Although the Act speaks of "direct" payments to local government units, the term is somewhat misleading. This is because tax prepayments are not sent directly to the affected local government unit, but are paid to the county treasurer, as are all property tax payments. The county treasurer serves as tax collector for all local government units within the county and credits each tax prepayment to the impact fund of the appropriate local government unit to be used as specified in the plan.

If the plan provides for direct payment of grants, these may be paid either directly to the local government unit or to the county treasurer. In either case, the payment must be credited to the impact fund of the appropriate local government unit.

Some community services may be provided either by a local government unit or by a nonprofit organization, with or without financial assistance from a local government unit. Particularly in rural areas, quasi-governmental nonprofit service providers include volunteer fire departments, volunteer ambulance services, emergency medical teams, and quick response units. In the impact plan a developer may agree to provide financial or other assistance to nonprofit corporations that provide quasi-governmental services. The quasi-governmental status of the service means that an affected local government unit might receive and transmit the impact payment or that the developer might make the payment directly to the nonprofit service provider, whichever the plan provides.

Following is a more detailed explanation of the procedures and requirements for making and receiving impact payments as specified in an approved impact plan.

PAYMENT PROCEDURE AND DOCUMENTATION

As noted above, the developer may make impact payments either via the Board (as required under the original Act) or "directly" to the affected local government unit, whichever is specified in the impact plan. Under either procedure, (a) the developer, or the Board in transmitting the payment, will send all tax prepayments to the county treasurer; (b) the recipient of the payment will credit the payment to the impact fund of the appropriate local government unit; and (c) the developer, the county treasurer and the affected local government units will send the same basic documentation to the Board.

The payment requirements and procedure are as follows:

1. As discussed above, if taxes are to be prepaid, the developer must provide the Board with an acceptable financial guarantee, as required by 90-6-309(3), MCA, and ARM 8.104.214.

2. If the approved plan provides that payment is to be made through the Board, the Board will assign a pass-through subaccount number to that

impact plan. The subaccount number should appear on each impact payment check from the developer.

3. The affected governing body must create an impact fund and must budget for the receipt and expenditure of impact payments.

Each fiscal year during which impact payments are to be expended, the local governing body must provide the Board with (a) a copy of the impact fund budget, and (b) a copy of the signed resolution by which the governing body has adopted the impact budget.

4. After the developer has received permission to commence activities under the operating permit, the governing body of the county is to request that the developer make tax prepayments as specified in the impact plan. This general request to the developer is made on behalf of all affected local government units. The county sends a copy of the general tax prepayment request to the Board.

Sometimes this request serves to activate the impact plan, particularly if construction of the mining project and implementation of the plan were delayed after the plan was approved.

5. Individual grant and tax prepayments are made (a) in accordance with the financial commitment and schedule specified in the approved impact plan and (b) upon request of the affected local governing body. The affected governing body must request each tax prepayment provided for by the plan. Grant payments will be made upon request also, unless the plan specifically provides they are to be made on schedule without a request from the affected governing body.

The affected local governing body requests each payment from the developer, in writing, and provides a copy of the written request to the Board. The request must be signed by the governing body or its designated representative, such as the county treasurer.

Each request for payment, transmittal of payment, or receipt for payment must include or be accompanied by the information specified in the sample form shown in Appendix XI: (a) name of developer; (b) date of request, transmittal or receipt; (c) name of recipient local government unit; and (d) the amount, purpose, and type of payment with a reference to the plan's provision for the payment. (Type of payment means a grant, a tax prepayment, or other type of payment as specified in the plan.)

6. If payment is made through the Board, the request for payment must be preceded or accompanied by the impact fund budget and resolution, discussed in item 3 above, and by a letter from the governing body which:

(a) certifies that the local government unit is providing or is preparing to provide the service or facility for which payment is being requested; and

(b) specifies the date on which it is anticipated the service or facility will be made available.

7. The developer makes each payment upon receipt of the request from the local government unit, pursuant to the schedule in the plan, or within the time frame established in the impact plan. (For example, one plan provides that certain conditional payments will be made within 90 days of when the local government notifies the developer that the "triggering" circumstance has occurred.)

8. If payment is made through the Board, the developer must send both the payment check and a letter of transmittal to the Board with a copy of the letter to the affected local government unit.

The payment check is made out to the Hard-Rock Mining Impact Board and refers to the pass-through subaccount number assigned by the Board. Several impact payments may be included in a single check, provided that the letter of transmittal includes the required information for each payment. As noted in item 5 above, the letter of transmittal must contain the information specified in Appendix XI.

9. If a tax prepayment is made directly to the local government unit, the developer must send the check and a letter of transmittal to the county treasurer, noting that the payment is to be credited to the impact fund of the appropriate local government unit. The developer must also send a copy of the letter of transmittal to the affected local government unit and to the Board.

10. If a grant payment is made "directly" to the local government unit, the developer may send the check either to the affected governing body or to the county treasurer, as the plan provides or as the governing body and developer agree. In either case, the payment must be accompanied by a letter of transmittal and must be credited to the impact fund for the affected local government unit.

A copy of the letter of transmittal is sent to the affected governing body, to the Board, and, if payment is made through the treasurer, to the county treasurer.

11. The governing body of the affected local government unit or the county treasurer must provide the Board with a receipt for each payment received from the developer. The receipt must contain the information shown in Appendix XI.

If the requested or actual impact payment differs from what is required by the plan, the letter of transmittal should note this difference, showing the amount required by the plan, the amount requested and the amount paid. Unless the plan is adjusted or amended, the developer and affected local government units are bound by their commitments in the plan.

The purpose of the procedure outlined above is to assure compliance with statutory requirements and to provide accurate records of the implementation of the plan.

The payment procedure should be interpreted in a manner appropriate to the specific provisions of the approved impact plan.

EXAMPLE: In an impact plan the developer makes several commitments to a rural fire district. The developer commits to make a grant within the first 90 days of Impact Year I for the purchase of additional equipment by the district. The developer and the district trustees also agree to enter into a memorandum of understanding, or mutual aid agreement. The agreement is to be reviewed annually and revised or renewed as appropriate.

The purpose of the mutual aid agreement is to define respective responsibilities for training fire fighting personnel, for making equipment available, and for providing fire protection at the mine site and in the area encompassed by the district. The agreement identifies the circumstances under which the developer will provide equipment or fire fighting assistance away from the mine site and the scope of assistance the developer will provide; the scope of services the district will provide at the mine site and the conditions under which the services will be provided; other assistance from the developer that will enable the district to provide the additional services specified in the agreement; and the method of calculating reimbursement for the actual cost of certain fire fighting services provided by the district on behalf of the developer.

Pursuant to the memorandum of understanding or mutual aid agreement, the district requests an impact payment. The letter requesting the payment should specify that the request is consistent both with the impact plan, which contains the developer's commitment to enter into a mutual aid agreement, and with the terms of the agreement itself. In addition to citing the appropriate reference in the impact plan, the district should attach a copy of the mutual aid agreement to the copy of the payment request sent to the Board. In effect, the agreement has become part of the approved impact plan.

Adequate documentation of payments is important to both the developer and the affected local government units. Affected local government units must comply with all normal budgeting and accounting requirements, with the requirements of the Impact and Tax Base Sharing Acts, and with their commitments to provide the services and facilities for which they are receiving impact payments.

It is important for local government units to maintain accurate records of all property taxes prepaid by the developer, because, subject to certain limitations, the Impact Act requires local government units to credit these prepayments against the developer's future taxes.

It is also important that the developer document the date, amount, recipient, type and purpose of each payment it makes. This is because the operating permit for the mine is conditioned on the developer's timely fulfillment of its obligations under the impact plan.

Documentation is important to the Board both because of the administrative requirements of the Act and because the Board is charged with notifying the Department of State Lands of any failure by the developer to comply with its commitments in the impact plan.

CONDITIONAL PAYMENTS

Several approved plans provide for conditional payments, that is, for payments

that will be made only under specified circumstances. The amount of each payment may be specified in the impact plan, or the plan may describe how the amount will be determined.

Following are examples of several types of conditional payment provisions: (a) the plan provides that the developer will reimburse a rural fire district for actual expenses incurred in responding to a fire at the mine and mill; (b) the plan establishes an impact contingency fund that may be expended for certain types of minor impacts or impact costs at the discretion of the governing body with the concurrence of the developer; (c) the plan provides that for the first year each net additional impact student is enrolled, the developer will pay to the school district an amount equal to the State "ANB" payment per student; and (d) the plan provides that a specified amount will be paid to the school district within 90 days of when the district notifies the developer that the school's total enrollment and impact student enrollment both exceed specified numbers.

The responsible entity needs to notify the other party or parties to the plan and the Board when a "triggering" event or circumstance occurs. The developer and affected local government units should decide ahead of time (a) how and by whom the triggering event or circumstances will be determined or verified, and (b) who is responsible for providing what information to whom. To avoid confusion and delays, both the plan itself and persons implementing the plan should be as explicit as possible about who is responsible for what. In implementing one plan, the developer and affected local government unit mutually acknowledge each triggering event or circumstances in a letter which both sign; they provide a copy of the signed letter to the Board. This appears to be a very workable procedure. The acknowledgment and related request for payment may be included in a single letter.

Conditional payments are subject to the same budgeting, accounting and payment procedures and requirements as any other impact payments.

TAX PREPAYMENT AND TAX CREDITING

Section 90-6-309, MCA, adopted in 1981 and amended in 1985, provides for the prepayment and crediting of property taxes by the developer. Appendix XII contains both the original and the amended version of this statute.

Each fiscal year following the commencement of production at the mineral development, the affected local governing body must determine how much, if any, tax credit to allow. The governing body should notify both the mineral developer and the Board when it has made this determination.

Plans submitted prior to July 1, 1985, are subject to the tax crediting provisions of the 1981 Act. That Act defined the procedure by which affected local government units must calculate the tax credit to be given each fiscal year after the mine begins production. The statutory formula used the current budget, historic mill levies and increased taxable valuation from the mineral development to determine how much, if any, tax credit could be allowed without causing an increase in the historic average mill levies of the taxing jurisdiction. Under the original Act, a local government unit provided the tax credit by reducing the taxable valuation of the development, as it applied to that jurisdiction only.

Plans submitted after June 30, 1985, are subject to the tax crediting amendment, which requires the impact plan itself to specify how tax crediting will be accomplished. As amended, the Act no longer allows prepaid taxes to be credited by reducing taxable valuation. Instead, the amendment anticipates that, subject to certain limitations, the governing body will provide a credit against the developer's future tax bills.

Section 90-6-308, MCA, stipulates that the tax credit allowed in a given fiscal year may not exceed the tax obligation of the developer for that year. The 1981 Impact Act provided that no tax credit resulting from the statutory formula could be made more than 10 following the tax prepayment. The 1985 amendment extends the period for making tax credits to coincide with the productive life of the mine.

Normally, tax receipts, including tax prepayments, are distributed among all funds in the budget of the taxing jurisdiction. However, taxes prepaid in compliance with an approved impact plan are deposited only into the impact fund and are expended only for the purposes identified in the approved plan and reflected in the adopted impact fund budget. For instance, a tax prepayment made for the purpose of maintaining a county road may be credited only to the impact fund and may be expended only for maintenance of that particular road. This limitation has additional significance when it comes to providing tax credits.

County governments are subject to laws that require certain services to be financed through the county general fund and others through separate funds, such as the library fund, the weed district fund, and the county road and bridge funds. Each fund is subject to its own mill levy limit. The total county mill levy is a composite of the individual levies. (Similarly, the total tax bill received by the taxpayer reflects the levies or fees of all local government taxing jurisdictions in which the taxpayer's property is located, plus statewide school and university system levies.) With regard to tax credits, this arrangement raises the question of whether a tax prepaid to the county should be credited only from the specific fund that corresponds to the service for which the prepayment was made, such as the county road fund, or from the total tax revenue paid by the developer to the county, without regard to how the tax prepayment was allocated or used.

The question is of particular significance with respect to county roads. Not only is the county road fund separate from the county general fund, but, in effect, the two funds represent different taxing jurisdictions. Property in an incorporated city or town is taxed for the county general fund, but is not taxed for the county road fund. Therefore, if a tax is prepaid for the purpose of upgrading or maintaining a county road, crediting of that prepayment from a fund other than the county road fund, would cause municipal taxpayers to bear part of the effect of the tax credit. Consequently, if the plan itself provides for the method of tax crediting, a local government unit might provide credits from some funds but not from others in the same fiscal year. The affected local government units and the developer may want to discuss such tax crediting issues with the Local Government Services Bureau of the Department of Commerce.

The increased capital and net operating costs attributable to the mining operation are the financial responsibility of the developer. To be consistent

with the purpose of the Act and with the developer's commitment to pay all increased capital and net operating costs, a tax credit should neither cause an increase in mill levies nor shift the increased costs to taxpayers in another taxing jurisdiction. For instance, the presence of a net operating cost in any fund or taxing jurisdiction indicates that, contrary to the purpose of the Act, a tax credit from that fund or taxing jurisdiction in that fiscal year would shift the burden of cost to the non-developer local taxpayers.

Given the requirements of the Impact Act and the advice of the Local Government Services Bureau, the Board suggests applying the following basic criteria to the provision of tax credits when an impact plan provides for tax crediting:

1. In any given fiscal year, a tax credit must not create nor add to capital or net operating costs resulting from the mineral development.

2. In any given fiscal year, tax crediting should not occur if it would cause the non-developer local taxpayer to bear increased capital or net operating costs resulting from the development, regardless of the year in which the costs were incurred.

3. Conversely, a tax credit should not cause a reduction in the existing level of service, the level of service planned without the development, or in the level of service needed as a result of the mineral development.

4. A prepaid tax should be credited from the fund which corresponds to the service for which the tax was prepaid, if that fund represents a taxing jurisdiction other than the local government unit as a whole.

The following example illustrates situations in which tax credits might or might not be appropriate:

In fiscal year one, the local government is levying the maximum number of mills allowable for the county road fund. During this year, the developer, at its own expense, is upgrading and maintaining the county access road to the mine. Since the developer has made no tax prepayment, no tax credit is authorized.

In fiscal year two, the local government is levying the maximum number of mills allowable, and the mineral developer must prepay property taxes to meet increased costs for the maintenance of the county road. The local government will not grant a tax credit from the road fund during the same fiscal year in which the developer must prepay taxes to meet increased road maintenance costs.

In fiscal year three, the local government unit must levy the maximum number of mills allowable for the road fund. At this mill levy, the taxable valuation of the development is insufficient to meet all increased operating costs for road maintenance resulting from the development. A tax prepayment is again necessary to pay net operating costs. Therefore, no tax credit should be given.

In fiscal year four, the local government unit must levy the maximum number

of mills allowable for the road fund. The taxable valuation of the mineral development is just sufficient to meet the increased operating costs resulting from the development. No tax prepayment is necessary but no tax credit should be given because a tax credit from the road fund would result in a reduction in the historic or planned level of road maintenance service.

In fiscal year five, the increase in taxable valuation from the mineral development is sufficient both to pay the increased road maintenance costs resulting from the development and to allow for some tax credit without causing either a reduction in the needed level of service or an increase in the mill levy. The county calculates the amount of tax credit appropriate to fiscal year five.

If the tax credit is to be achieved by reducing the taxable valuation of the mineral development, as required by the original Act, it may not be possible to create a different valuation for different funds. The Local Government Services Bureau of the Department of Commerce and the Department of Revenue should be consulted on the implications of a single local government unit assigning multiple taxable valuations to the mineral development.

In calculating tax credits, the effects of tax base sharing should also be considered.

TAX BASE SHARING

In 1983 the Legislature enacted the Property Tax Base Sharing Act as companion legislation to the Hard-Rock Mining Impact Act. The Property Tax Base Sharing Act is found in Title 90, Chapter 6, Part 4 of the Montana Code Annotated.

Some definitions in the Tax Base Sharing Act differ from similar terms in the Impact Act. For example, under the Tax Base Sharing Act, the term "local government unit" means a county, municipality, or school district, but does not include independent special districts, which are unaffected by tax base sharing. In addition, the Tax Base Sharing Act defines "affected local government unit" as a local government unit that "will experience a need to increase services or facilities as a result of the commencement of large-scale mineral development or within which a large-scale mineral development is located," as identified in an approved impact plan.

The Tax Base Sharing Act begins with the following declaration of necessity and purpose:

> The commencement of new large-scale hard-rock mineral developments often results in revenue disparities among adjacent local government units. This occurs primarily when a mine that locates in one taxing jurisdiction causes population influxes in neighboring jurisdictions. The result can be that some jurisdictions will experience a need to increase expenditures and receive no corresponding increase in revenue, while others will experience an increase in revenue and receive no comparable increase in expenditures. There is therefore a need to allocate the increase in property tax base resulting from the development and operation of new large-scale mines so that property tax revenues will be

equitably distributed among affected local government units.

The allocation of tax base occurs if an approved impact plan projects that increased governmental costs will result from the proposed mineral development in counties, municipalities or school districts in which the mine is not located. These jurisdictions cannot tax the mine to pay the increased costs attributable to the development. This situation is referred to in the Tax Base Sharing Act as a "jurisdictional revenue disparity."

If the approved impact plan identifies a jurisdictional revenue disparity, the Board notifies the Montana Department of Revenue which must then allocate among the affected counties, municipalities, and school districts the increase in taxable valuation of the development occurring after the operating permit is issued.

This allocation is based on the number and place of residence of mineral development employees and their school-age children. On or before May 1 of each year, the mineral developer must conduct a survey of mineral development employees to determine where they and their of their school-age children live. This employee survey must include all persons, both local and inmigrant, who are employed by the developer or its contractors or subcontractors in the construction or operation of the mine or mill.

The developer must submit a report of its findings to the Department of Revenue with a copy to the county assessor of the affected county and to the Hard-Rock Mining Impact Board at the following addresses:

Administrator
Property Assessment Division
Montana Department of Revenue
Capitol Station
Helena, Montana 59620

Hard-Rock Mining Impact Board/DOC
Community Development Bureau
Cogswell Building, Room C-211
Capitol Station
Helena, Montana 59620

When the approved impact plan identifies a jurisdictional revenue disparity, the taxable valuation of the mineral development is separated into three categories, each of which is potentially subject to taxation by a different set of taxing jurisdictions:

1. The first category consists of that taxable valuation which existed prior to the mineral developer's receipt of the operating permit. This taxable valuation remains with the taxing jurisdictions in which the mineral development is located. Typically, these jurisdictions include one county, one high school district, and one elementary school district.

2. The second category consists of that increase in taxable valuation which occurs after the issuance of the operating permit. This valuation is apportioned among taxing jurisdictions in each of three tax base sharing groups, based on the number and place of residence of the mineral development employees or their school-age children:

(a) Instead of being allocated entirely to the county in which the mineral development is located, the increase in taxable valuation will be apportioned among the affected counties and incorporated cities and towns in which mineral development employees reside, with the limitation that

not more than 20 percent of the increase may go to all municipalities combined.

(b) Instead of being allocated entirely to the high school district in which the mineral development is located, the increase in taxable valuation will be apportioned among all affected high school districts in which student-children of the mineral development employees reside (or, initially, where the approved impact plan predicts that these students will be enrolled).

(c) Instead of being allocated entirely to the elementary school district in which the mineral development is located, the increase in taxable valuation will be apportioned among all affected elementary school districts in which school-age children of the mineral development employees reside (or, initially, where the plan predicts that these students will be enrolled).

Each eligible county, incorporated town, and elementary or high school district applies its own mill levy to its allocated share of the taxable valuation of the mineral development.

3. The third category encompasses the total taxable valuation of the mineral development, as it would be without tax base sharing, including both the valuation prior to issuance of the permit and the subsequent increase in valuation.

Independent special districts in which the mine is located are not subject to tax base sharing and continue to apply their mill levies against the total taxable valuation of the mine. Similarly, the county applies statewide mill levies for the school foundation program and for the university system against the total taxable valuation of the mineral development.

The Tax Base Sharing Act provides that if the initial allocation of increased taxable valuation occurs prior to the first employee survey, it is to be based on the plan's projections of where employees will reside and where their school age children will be enrolled in school. Subsequent allocations among school districts are made to the school district in which the student resides, as indicated in the developer's annual employee survey, regardless of where the student actually attends school. In point of fact, it appears that all allocations will be based on where the employees and the students reside, because of the sequence and timing of assessments (January), employee surveys (May), and local government fiscal years (beginning July 1.)

While tax base sharing adds to the number of local government units whose taxable valuation increases as a result of the mineral development, tax base sharing by itself does not remedy all jurisdictional revenue disparities. For example, although tax base sharing may increase the taxable valuation of the school district in which a student resides, it does not necessarily result in sufficient tax revenue to meet all increased costs resulting from that student. Further, if the student attends school in another district, tax base sharing does not address the increased costs of the district in which the student is enrolled. It is the function of the impact plan to ensure that all increased costs are identified and paid by the developer.

In the impact plan the developer must identify and commit to pay all increased capital and net operating local government costs resulting from the mineral development. The plan specifies the method and schedule of such payments, which may include tax prepayments, grants, education impact bonds or other forms of financing which do not shift the cost to the local taxpayer. Tax base sharing may affect the impact plan:

1. Tax base sharing does not affect the total increased operating costs resulting from the development. However, tax base sharing may change the net operating costs in each local government unit:

   (a) In local government units in which the mine is not located but which receive a portion of the increase in taxable valuation of the development because of tax base sharing, net operating costs will be less, because, in time, some or all of the increase in operating costs will be paid by tax revenues from the development.

   (b) In local government units in which the mine is located, net operating costs may be greater. Because of tax base sharing, these local government units will receive less than 100 percent of the increase in taxable valuation of the development. The tax revenue resulting from the lesser increase in taxable valuation may or may not be sufficient to meet increased operating costs.

   In any case, the Impact Act requires the developer to pay all net operating costs resulting from the development, as identified in the impact plan or in an approved amendment to the plan.

2. Because tax base sharing enables additional local government units to tax some portion of the taxable valuation of the mineral development, tax base sharing creates the potential for the developer to prepay taxes to local government units which otherwise could have received grants as impact payments, but not prepaid taxes.

   If the plan provides that the developer will prepay taxes to local government units that do not include the mine within their boundaries, the plan must also provide for tax crediting by those jurisdictions.

3. Tax base sharing does not affect the total taxable valuation of the mineral development, but may affect the amount of tax the developer actually pays. The local government units that receive taxable valuation through tax base sharing may have higher or lower mill levies than the jurisdictions in which the mine is located. As noted above, each jurisdiction applies its own mill levy to its allocated share of the development's taxable valuation.

As the Board understands the Tax Base Sharing Act, if a "jurisdictional revenue disparity" occurs only within one category of local government units, tax base sharing will be initiated only within that category. For instance, if a jurisdictional revenue disparity exists only among elementary school districts, tax base sharing will occur only among elementary districts, and not among high school districts, counties or municipalities.

After tax base sharing is initiated, it remains in effect "until the large-scale mineral development ceases operations or until the existence of

the jurisdictional revenue disparity ceases, as determined by the [hard-rock mining impact] board." As a matter of policy, the Board will determine whether the disparity has ceased to exist only if requested to do so by the mineral developer or an affected local government unit. When it does determine that a jurisdictional revenue disparity no longer exists, the Board will notify the Department of Revenue that it should terminate tax base sharing for the affected category of local government units.

Tax base sharing is discussed in more detail in Appendix XIII.

EDUCATION IMPACT BONDS

When there is a need for new or expanded school facilities as a result of a large-scale mineral development, the developer and the trustees of the school district may enter into a written agreement to issue a special education impact bond, as provided by 90-6-310, MCA. Under the agreement, the developer must provide for a payment guarantee. The developer must guarantee that it well pay the principal and interest of the education impact bond, in addition to taxes imposed by the school district on property owners generally. Annually, the district trustees must impose a special levy on the mineral development, in amounts sufficient to retire the principal and interest of the bond.

Education impact bonds do not constitute an indebtedness or a financial liability of the district as a whole. The debt limits set forth in 20-9-405, MCA, and the provisions of 20-9-410 and 20-9-421 through 20-9-432, MCA, do not apply to education impact bonds. The interest on the bonds is not subject to State taxes.

The trustees of the school district and the mineral developer should work with a qualified bond counsel in the preparation and issuance of an education impact bond.

MONITORING THE IMPACT PLAN

Cooperation between local governments and the mineral developer continues to be important throughout the implementation of the impact plan. To ensure that the approved plan does what it is intended to do, affected local governments and the mineral developer might wish to monitor critical features of the plan, such as the timetable of the development, the number and place of residence of employees and their school-age children, the number and place of residence of persons who move into the impact area as a result of the mineral development, and the actual impacts to local government services, facilities, costs and revenues.

Monitoring may be necessary both to implement specific provisions of the plan and to achieve the purposes for which the plan was prepared. The inclusion of conditional, "if...then," provisions in the plan presupposes some degree of monitoring by the developer and the affected local government units.

The need for local government services and facilities may be affected by changes in the timing or magnitude of the development, the size or characteristics of the available local workforce, or the number of persons moving into the area as a result of the development, their ages and where they

reside. Under tax base sharing, if local or inmigrating employees live in communities other than those in which the plan projected they would live, this will alter the anticipated allocation of taxable valuation and the projected revenues from the development. If actual revenue differs from projected revenue, net operating costs will not be as projected in the plan.

Monitoring and flexibility may be of particular importance when the plan projects major impacts and requires a significant commitment by the developer or when the assumptions and projections on which the plan is based involve considerable uncertainty.

Persons experienced in the mitigation of impacts from natural resource development advise that monitoring should be kept as simple as is consistent with the information needed to document "if...then" conditions and to verify the adequacy of the plan or document the need for its amendment. They also find that existing reporting requirements, both for the developer and for local governments, are often sufficient to provide most of the needed data without a duplication of effort. They recommend that the developer and affected local government units identify in advance who will assemble, transfer, and evaluate the needed information, and how and by whom decisions will be made based on the results of the monitoring.

KEY EVENTS AND DATES

The developer is to notify the Board and the governing body of each affected local government unit within 30 days of the occurrence of each "key event" identified in the impact plan or in ARM 8.104.203. These events affect the prepayment and crediting of taxes and the implementation and amendment of the plan.

In all plans, the developer must define and agree to provide notice of the commencement of commercial production. This event triggers a two-year time limit before the end of which either the developer or the county, unilaterally, may file a petition to amend an approved plan owing to material inaccuracies in the plan based on errors in impact assessment.

ADJUSTMENT AND AMENDMENT OF AN APPROVED IMPACT PLAN

The requirements and procedures for amending an approved impact plan are found in section 90-6-311, MCA, and ARM 8.104.216.

An impact plan may provide for its own amendment by specifying the conditions under which the plan may be amended.

In addition, under circumstances defined by statute, either the governing body of an affected county or the mineral developer may petition the Board to amend the plan:

(a) if it is expected that employment at the mineral development will increase or decrease by at least 75 persons, as defined by 90-6-302(4), MCA, over or under the employment levels contemplated in the approved impact plan; or

(b) if within two years of the beginning of commercial production, it

becomes apparent that an approved impact plan is "materially inaccurate" because of errors in impact assessment.

If the existence of specific conditions is a prerequisite to the filing of a unilateral petition to amend the plan, the petitioner must certify that these conditions exist.

Under the Act, the governing body of the county serves as formal petitioner on behalf of the affected local government units within the county. This is in keeping with the "lead agency" role of the county, in which the county should coordinate local governments' review, implementation and amendment of the impact plan, when such coordination seems advantageous. (The Board regards the filing of a petition for amendment as a procedural responsibility of the county, which does not indicate either support of or opposition to the amendment by the county governing body. In fact, the county governing body could act both as petitioner on behalf of another local government unit and as objector on its own behalf, if it considers the proposed amendment to be contrary to the best interests of the county.)

At any time, the governing body of an affected county and the mineral developer may join in a petition to amend the impact plan.

The procedures for amending an impact plan are the same regardless of the circumstances under which the petition is filed. Section 90-6-311, MCA, requires every petition for an amendment to include:

(a) an explanation of the need for an amendment;

(b) a statement of the facts and circumstances underlying the need for an amendment; and

(c) a description of the corrective measures proposed by the petitioner.

These basic statutory requirements apply to all petitions to amend an approved plan whether filed by one affected party or by the mutual consent of all affected parties. The format for the petition is contained in Appendix XIV.

The petition is filed with the Board. Upon receiving it, the Board publishes notice of the proposed amendment in a newspaper of general circulation in the most affected county. Within 60 days after the notice is published, any party to the plan may file an objection to the proposed amendment. If no objection is filed with the Board within the 60 days, the plan is amended as proposed by the petition.

Appendix VII provides the format for filing an objection to a petition for amendment. The objection must specify why the impact plan should not be amended as proposed by the petitioner.

If the mineral developer and affected local government units are unable to resolve an objection within 30 days after the 60-day review period expires, the Board holds a public hearing in the most affected county within 30 days after the negotiation period. Following the hearing, the Board will adjudicate the disputed issues and serve its findings and any amendments on all parties to the plan. Any affected party may seek judicial review of the

Board's decisions.

If the Board or the court finds that a local government unit's objection is valid, and if the objection results in some remedial order, the Board or the court must award the local government unit its "reasonable costs and attorneys fees associated with any administrative or judicial appeals." The developer must pay these costs.

Generally, an approved plan must be amended before any commitment by the developer may be changed regardless of whether the change represents an increase or a decrease in impact assistance. However, a plan may provide for its own adjustment without a formal amendment under the following circumstances.

A plan may provide that the developer's commitments will change in specific ways under specified circumstances. These specified changes are referred to as "plan adjustments" and do not require formal amendment. For instance, the plan may specify the developer's commitment under each of several scenarios. It is not necessary to amend the plan in order to implement the specified commitment.

An adjustment is also possible when the plan provides a specific method for determining the amount of financial assistance to be provided by the developer. For example, the plan may provide that for the first year of enrollment of each mine-related student who represents a net increase in the total number of students, the developer will grant to the school district an amount equal to what the district would have received as the State ANB payment for that student. The adjustment may be made after the district and the developer document the total number of students, the number of mine-related students, the net increase, and the amount corresponding to the ANB payments.

When the developer and affected local government units determine which circumstances and commitments are in effect, they should acknowledge this in a signed letter and notify the Board. Throughout the implementation of the plan the Board needs to know what commitments are in effect in order to carry out its responsibilities under 90-6-307, MCA..

An amendment, rather than an adjustment, is necessary when a plan contains "if...then" provisions or alternative scenarios that do not specify or provide a method of calculating the developer's financial responsibilities and commitments.

Unless the plan clearly specifies otherwise, the Board will interpret the commitments made in the plan as follows:

(a) The developer's commitment is to make a certain amount and type of payment, according to the schedule specified in the impact plan. The payment is made in order to ensure that the recipient local government will provide the identified level of service when and where that service is needed. (To enable the local government to do this, the plan needs to take into account the time constraints that may affect local government actions.)

(b) The local government unit's commitment is to provide the specified

service or level or service when and where it is needed as a result of the development.

The local government unit must provide the agreed-upon level of service, but the method of providing the service may change without the necessity for a formal amendment. For example, a local government may find that a different piece of equipment or a different staffing arrangement will be a preferable way of providing the needed service. If the its method of providing the identified service can be changed without reducing the needed level of service and without exceeding the financial commitment of the developer, the plan need not be amended. However, the affected parties should jointly acknowledge the adjustment in writing and provide a copy of this acknowledgment to the Board.

In terms of local government budgeting and accounting procedures, adjusting a plan as described above means that impact payments may not be transferred from one budget category (service) to another within the impact fund unless the plan specifically provides otherwise. The transfer of money from one budget category to another implies a change in the use of the impact payment from one service to another, which would require a plan amendment. Similarly, unless the plan specifically provides otherwise, impact payments may not be transferred from one local government unit to another except by formal amendment.

ENFORCEMENT

If the developer fails to make payments or to comply with other commitments specified in the approved impact plan, the Board must notify the Department of State Lands. The Department is required to suspend the developer's operating permit until such time as the Board notifies the Department that the developer is once again complying with its commitments in the impact plan and with the requirements of the Impact and Tax Base Sharing Acts.

Although the Board is responsible for administering the Impact Act and may monitor compliance with the Act as appropriate, the Board believes that the affected local government units and the mineral developer have primary responsibility for monitoring the impact plan itself. Therefore, as a matter of policy, the Board considers it to be the responsibility of the affected local government unit to notify the Board of any failure by the developer to comply with its commitments in the approved impact plan.

CONCLUSION

To facilitate the implementation of an approved impact plan and to ensure that the plan achieves the purposes for which it was prepared, the Board encourages the continuing cooperation of all affected parties. In implementing the plan developers and local government units should comply not only with the specific provisions of the plan itself, but also with the requirements and intent of the Impact and Tax Base Sharing Acts and with other laws and regulations to which local government units are subject, including accepted local government budgeting and accounting practices. The Board stands ready to provide assistance with questions concerning the requirements and procedures for implementing an approved impact plan.

CHAPTER IV

IMPACT PLANS, WAIVERS AND CONDITIONAL WAIVERS FOR EXISTING MINE PERMITTEES

Each hard-rock mineral developer that applies for an operating permit from the Department of State Lands on or after May 18, 1981, is potentially subject to the impact plan requirements of the Hard-Rock Mining Impact Act. If the proposed mineral development is "large-scale" at the time the developer applies for an operating permit, the developer must prepare an impact plan as a condition of the permit. If the mineral development becomes "large-scale" after it has received its operating permit, the developer must prepare an impact plan unless it petitions the Board for a waiver from the impact plan requirement and the Board, at its discretion, grants a waiver or conditional waiver.

The term "large-scale mineral development" is defined in section 90-6-302(4), MCA, to include those mine-related activities which are encompassed by the operating permit, that is, the construction and operation of the mine and associated milling facility. The development is considered "large-scale" if "the average number of persons on the payroll of the mineral developer and of contractors at the development exceeds or is projected to exceed 75 for any consecutive 6-month period."

The Department of State Lands determines whether a mine permittee has become a "large-scale mineral development," as defined above. Each permittee must file periodic employee reports with the Department, at intervals established by the Department. These reports identify the number of persons employed in the construction and operation of the mineral development during the preceding year and the number expected to be employed in the coming year. If the employment level reaches or is expected to reach "large scale" status, the Department must notify the permittee, the Hard-Rock Mining Impact Board, and the county in which the mine is located.

Following notification from the Department, the Board and the governing body of the affected county will identify the local government units that may be affected by the development.

If the developer petitions for a waiver of the impact plan requirement, the Board provides notice of the petition and an opportunity for a public hearing on whether to grant the waiver. The Board will hold the hearing if requested to do so. Therefore, if the governing body of a potentially affected local government unit considers that either an impact plan or a conditional waiver may be needed, the governing body should notify the Hard-Rock Mining Impact Board. The Board will then hold the required public hearing and will determine whether to require an impact plan or grant a waiver or conditional waiver.

The Board will grant a waiver or conditional waiver under the following conditions specified in ARM 8.104.219:

(1) no potentially affected local government unit requests the Board to deny the waiver, to grant a conditional waiver, or to require an impact plan; or

(2) the permittee and the governing bodies of all potentially affected local government units notify the Board in writing that:

(a) they do not anticipate a need to increase local government services and facilities as a result of the identified or projected increase in employment; or

(b) the anticipated increase in need for services and facilities is not expected to result in an increase in local government costs to the non-developer taxpayer.

After holding the hearing, if one has been requested, the Board may grant a waiver if it appears unlikely that any local government unit will experience adverse fiscal impacts as a result of the changes in employment identified in the permittee's report to the Department or as a result of associated changes in the mining operation itself. The Board may grant a conditional waiver if it appears that the identified level of employment results in a demand on local service capacity such that any subsequent increase in employment or employment related population is likely to increase the need for governmental services and facilities and the consequent costs. The Board may also grant a conditional waiver if it appears that service and facility needs can be met, and adverse fiscal impacts to non-developer local taxpayers avoided, through the developer's compliance with the terms of a conditional waiver.

Following the hearing, the Board may grant a conditional waiver if its own evaluation supports the action or if the developer and one or more potentially affected local government units jointly request in writing that it do so. Such a request should identify the commitments made by the developer and other conditions of the waiver that will enable the affected local government units to meet the anticipated increase in need for governmental services and facilities without causing the non-developer taxpayer to bear increased costs as a result of the development.

In granting a conditional waiver, the Board will specify the conditions, or terms, of the waiver, taking into account the testimony at the public hearing. A conditional waiver would be most appropriate when the impacts are specific and easily identifiable or when an affected local government unit needs to establish criteria for revoking the conditional waiver that are more stringent than those provided by statute. For example, a conditional waiver might provide that the developer will upgrade and maintain, or contribute to the maintenance of, the county access road to the mine, according to specified standards agreed to between the county and the developer. Or, a conditional waiver might provide that no impact plan will be required so long as the number of additional employees or mine-related students does not exceed a certain number.

After a waiver or conditional waiver has been granted, an affected local government unit may decide there is cause to revoke the waiver and may so notify the Board. The Board may revoke a waiver only upon the request of an affected local government unit and only under circumstances specified by statute or as specified in a conditional waiver itself. By statute, a waiver or conditional waiver may be revoked if the permittee and contractors at the mineral development increase their payrolls from the date of the waiver by 75 or more persons or as provided in a conditional waiver itself. Again, before

revoking a waiver, the Board must provide notice and opportunity for a public hearing to the permittee and all affected local government units.

After determining whether to grant, deny or revoke a waiver or conditional waiver, the Board notifies the permittee, the affected local government units, and the Department of State Lands of its action and provides each of these entities with a copy of the waiver, conditional waiver or denial of waiver.

If the Board requires the developer to prepare an impact plan, the developer must submit the proposed plan to the Board and to the affected local government units as provided by the Impact Act. Within six months of when the Department notifies the permittee of its "large-scale status," the permittee must file with the Department either proof of having been granted a waiver by the Board or proof of having submitted the impact plan for formal review.

As a condition of its operating permit, a large-scale mineral developer must comply with the requirements of the Impact and Tax Base Sharing Acts, which may include compliance with commitments in an approved impact plan or compliance with the terms of a conditional waiver. If the large-scale permittee fails to comply with these requirements or if it fails to file the required proof of waiver with the Department of State Lands, the Board of State Lands must suspend the mineral developer's operating permit. The permit remains suspended until the permittee files the required proof or until the Hard-Rock Mining Impact Board notifies the Department that the permittee has submitted the plan or that the permittee is complying with the terms of the conditional waiver or the commitments in the approved plan.

The statutory and regulatory requirements related to impact plan waivers and conditional waivers may be found in sections 82-4-335 and 82-4-339, MCA; 90-6-307, MCA; and ARM 8.104.217.

CHAPTER V

PROCEDURES FOR THE PREPARATION, REVIEW AND IMPLEMENTATION OF AN IMPACT PLAN

The following chapter outlines the basic procedural requirements associated with the preparation, review, and implementation of a hard-rock mining impact plan. This chapter should be used in conjunction with the appropriate statutes and rules and the chapters on impact plan preparation, review and implementation; impact plan waivers; and the trust account grant-loan program.

The procedural requirements are listed in roughly chronological order, specifying what action is to be taken and by whom. The list refers to a few substantive items as context for the procedural requirements. Necessarily, the list is not comprehensive; each impact plan brings with it some unique considerations.

For the most part, this chapter does not address the internal procedures of the Board, the interaction of the Board with the Department of State Lands and the Department of Revenue, or the internal procedures of local governments, except as these are discussed by the Impact and Tax Base Sharing Acts.

Other chapters of this publication discuss the purpose, substance and function of the Impact and Tax Base Sharing Acts, the impact plan, and the grant-loan program for mitigating impacts from the reduction in workforce or closure of hard-rock mines. A proposed procedure for implementing the Property Tax Base Sharing Act is discussed in some detail in Appendix XIII.

****
1. BEFORE THE PLAN IS SUBMITTED/PREPARATION OF THE IMPACT PLAN
****

_____ a. The Department of State Lands (DSL) determines that a potential applicant for a hard-rock mine operating permit is a "large-scale" mineral developer, as defined by 90-6-302, MCA. DSL notifies the developer and the Hard-Rock Mining Impact Board.

Authority: 90-6-302, MCA; 82-4-335, MCA; 90-6-307, MCA.

_____ b. The developer informs the affected county (or counties) and the Board of its intention to submit an impact plan and of the approximate date of submission.

Authority: by request of the Board, given its responsibility for administration of the Act; see 90-6-305, MCA and the Statement of Intent for HB472, 48th Legislative Session, 1983.

_____ c. The developer and governing body of the county identify and prepare a list of all potentially affected local government units (names and addresses). The list specifies the number of

copies of the plan each local government unit needs for its review. The developer and the governing body of the county provide the list to the Board.

Authority: 90-6-302, MCA; ARM 8.104.204; Board policy.

_____ d. The developer and affected local government units identify the statutory and regulatory requirements for the format and content of an impact plan.

Working with the local government units, the developer prepares the fiscal impact plan in compliance with the requirements of the Hard-Rock Mining Impact Act, the Tax Base Sharing Act, and the Board's administrative rules.

The impact plan specifies whether the developer will make impact payments directly to local governments or through the Board.

If the impact plan requires the developer to prepay property taxes, the plan also provides for crediting the prepaid taxes.

An impact plan may provide for its own amendment under definite conditions specified in the plan itself or under the conditions set forth in 90-6-311, MCA. The plan may also provide for its own adjustment, within the limitations and criteria established by the Board.

Authority: 90-6-307, MCA; 90-6-309, MCA; 90-6-310, MCA; 90-6-311, MCA, especially subsection (1); part 4, Title 90, Chapter 6, especially 90-6-405; ARM 8.104.203 and 203A; Board policies.

_____ e. The governing body of an affected local government unit may request financial or other assistance from the developer to prepare for and evaluate the impact plan. The governing body of the county enters into a contract with the developer for the requested financial assistance.

The developer provides the requested financial or other assistance.

Financial assistance constitutes a tax prepayment which the local government unit must credit against the developer's future tax liabilities, if any.

Authority: 90-6-307, MCA.

****

2. UPON SUBMISSION (by developer) AND RECEIPT (by affected local government units and the Hard-Rock Mining Impact Board) of the IMPACT PLAN

****

_____ a. After the developer applies for an operating permit from the Department of State Lands and when the plan is complete, the

developer submits 12 copies of the plan to the Board and sufficient copies of the plan to the county to meet the review and implementation needs of the affected local government units.

The county, or the county and the developer together, determine how copies of the plan are to be distributed to the affected local government units so that all affected local government units will receive the plan on the same day as the county and Board.

Authority: 90-6-307 and 308, MCA; 82-4-335, MCA; ARM 8.104.204; Board policy.

_____ b. The developer files proof of submission of the plan with the Board.

Authority: 90-6-307, MCA; ARM 8.104.205.

_____ c. Receipt of the plan by the Board and all affected local government units initiates the formal 90-day review period. The review period begins the day after the latest day the plan is received and ends on the 90th day thereafter that is also a working day (i.e., not a weekend nor holiday).

Authority: 90-6-307, MCA; ARM 8.104.206.

_____ d. Upon receipt of the plan, the governing body of each affected county publishes notice of receipt of the plan. The notice is to appear in a large, readable format in a local newspaper of general circulation.

The county provides the Board with a copy of the notice with the date of its publication.

Authority: 90-6-307, MCA; Board policy.

****

3. REVIEW AND APPROVAL OF THE PLAN (and, if necessary, extension of review period)

****

_____ a. Affected local government units review and evaluate the plan during the 90-day review period.

Local governments review the plan for the adequacy and accuracy of its data, assumptions, projections and impact mitigation provisions. The review includes but is not limited to:

(1) evaluation of the plan's adequacy and accuracy in
    (a) identifying impacts to local government services and facilities expected to result from the mineral development;

(b) identifying increased capital, operating and net operating costs to services and facilities resulting from the mineral development;
(c) identifying the developer's commitment to pay by an acceptable method and according to an acceptable schedule all increased capital and net operating costs resulting from the development;
(d) if taxes are to be prepaid, providing an appropriate method for calculating tax credits that does not reduce the level of service or shift the increased costs to other local taxpayers;
(e) specifying conditions under which the plan may be amended;
(f) specifying requirements related to the implementation of the plan; and
(g) providing such other information, projections and commitments as are required under the Impact Act and the Property Tax Base Sharing Act.

(2) evaluation of the technical completeness of the plan and its compliance with all statutory and regulatory requirements for form and content.

Authority: the Impact and Tax Base Sharing Acts, especially 90-6-307, MCA; ARM 8.104.203; and the Statement of Intent, HB645, 1987 Legislature.

_____ b. An affected local government unit may request financial or other assistance from the developer to help prepare for and evaluate the proposed impact plan. When such a request is made, the county contracts with the developer for assistance on its own behalf or on behalf of other local government units within the county. The developer provides the requested assistance.

Such financial assistance constitutes a tax prepayment and must be credited against future tax liabilities, if any.

Authority: 90-6-307, MCA.

_____ c. During the 90-day review period, the county publishes notice and holds a public hearing on the proposed impact plan.

Authority: 90-6-307, MCA, as amended in 1987 by HB645.

_____ d. An affected local governing body may petition the Board for one 30-day extension of the formal review period, provided there is reasonable cause.

The Board grants the 30-day extension provided there is a reasonable basis for the request.

The extension applies only to the local government unit or units that request it. During the 30-day extension, only the governing body of the requesting local government unit may file

objections to the proposed plan. Other affected local government units may respond to the objections.

Authority: 90-6-307, MCA; and ARM 8.104.208A.

_____ e. During the 90-day review period, the negotiation period, or an extension of either, one or more affected local governing bodies and the mineral developer, by mutual consent, may modify the form or content of the submitted plan.

The modification must be submitted in writing to the Board and to all affected local government units identified in the plan. The copy filed with the Board must bear the signatures of the designated representative of the developer and of the governing body of each local government unit affected by the modification.

If a modification affects only the form and not the substance of the plan, the modification may be signed by the developer and the governing body of the county, acting on behalf of all affected local government units in the county.

A modification submitted after the 60th day of the review period must carry with it a request from the local governing body for a 30-day extension to the review period, to enable all affected local government units to review the proposed modification.

Each modification and the complete plan as modified must comply with the statutory and regulatory requirements for the form and content of an impact plan.

Authority: 90-6-307, MCA; ARM 8.104.203 and 8.104.213.

_____ f. During the 90-day review period, if an affected local government unit disagrees with the proposed plan, whether because of what the plan contains or what it omits, the governing body may notify the Board in writing of its objections to the plan, specifying the reasons for its objection and providing other information required by statute and rule.

The governing body provides a copy of its objections to all other affected local government units.

Only the local governing body may file an objection on behalf of the local government unit and the taxpayers within its jurisdiction.

Authority: 90-6-307, MCA; and ARM 8.104.207 and 8.104.208.

_____ g. A local government unit that has not been identified in a proposed impact plan as an affected local government unit may file an objection to the proposed plan if the local government unit clearly demonstrates that it is likely to experience

increased capital and operating costs from the mineral development.

Authority: 90-6-307, MCA, as provided by HB645 in 1987; Board policy.

_____ h. Within 10 days of the receipt of objections from a local government unit, the Board notifies the developer and forwards copies of the objections to it.

The affected local government unit and the mineral developer continue to try to negotiate an agreement on the disputed elements of the impact plan.

Authority: 90-6-307, MCA; and ARM 8.104.207 and 8.104.208.

_____ i. At the end of the 90-day review period or its 30-day extension, if no objections have been filed or if all objections have been resolved, the plan is approved.

Authority: 90-6-307, MCA.

_____ j. At the end of the 90-day review period or its 30-day extension, if any objections remain unresolved, a formal 30-day negotiation period begins.

Authority: 90-6-307, MCA.

_____ k. The mineral developer and an affected local governing body may jointly petition the Board to extend the negotiation period for a specified time.

Authority: 90-6-307, MCA; and ARM 8.104.209.

_____ l. By the end of the negotiation period or its extension, the governing bodies of the affected local government units and the developer notify the Board in writing of the outcome of their negotiations, identifying which issues have been resolved and which remain in contention.

The developer provides the Board with a copy of the mutually agreed upon amendments to the plan. The official copy of the amendments bears the signature of the designated representative of the developer, the chairperson of the governing body of each local government unit that is a party to the amendment, and the chairperson of the governing body of the county, certifying that the entities they represent concur with the negotiated amendments.

Authority: 90-6-307, MCA; and ARM 8.104.209.

_____ m. If all objections are resolved during the negotiation period, the developer and affected governing bodies certify to that

effect to the Board, providing copies of the amendments as noted above. The plan is then automatically approved.

Authority: 90-6-307, MCA; and ARM 8.104.209.

-- OR --

_____ n. If any objections remain unresolved, the Board publishes notice of time, place and subject matter of a public hearing on unresolved objections.

The Board holds the hearing in the most affected county.

Authority: 90-6-307, MCA; ARM 8.104.202; Board policy.

_____ o. The Board adjudicates the unresolved objections.

Within 60 days after the closure of the hearing, the Board makes its findings.

The Board amends the plan, as necessary to resolve the objections, and approves the plan, as amended.

The Board serves the developer and affected local government units with its findings and the amendments to the plan.

Authority: 90-6-307, MCA; Board policy.

****

4. FOLLOWING APPROVAL OF IMPACT PLAN

****

_____ a. If the Board adjudicates objections, an affected local government unit or the developer may request judicial review of the decision of the Board in the judicial district where the Board held its public hearing.

Authority: 90-6-307, MCA.

_____ b. If a local government objection or court appeal is found to be valid and results in a remedial order, the Board or court must order and the developer must pay reasonable costs and attorney fees to the affected local government unit.

Authority: 90-6-307, MCA.

_____ c. The Board notifies the developer, the affected local government units, and the Department of Revenue when the Board identifies a jurisdictional revenue disparity in an approved impact plan.

(The Department of Revenue implements the Tax Base Sharing Act. See Appendix XIII.)

Authority: 90-6-403, MCA.

_____ d. The developer, within 30 days of receiving the approved plan, provides the Board and the Department of State Lands with a written guarantee that it will meet the increased costs of public services and facilities as specified in the approved impact plan and according to the schedule in the plan.

Authority: 82-4-335 and 90-6-307, MCA.

_____ e. Upon receipt of the developer's written guarantee, the Board notifies the Department of State Lands that the plan is approved and the guarantee has been received.

Authority: 90-6-307, MCA; ARM 8.104.211; Board policy.

_____ f. If the plan requires the developer to prepay taxes, the developer must guarantee to the Board, through a financial institution, that the property tax prepayments will be paid as needed. The financial guarantee must be acceptable to the Board.

The financial guarantee must be submitted in sufficient time to be reviewed and approved by the Board within 10 days of when the Department of State Lands issues the operating permit or prior to the time the affected local government unit must incur financial obligations in the implementation of the approved impact plan, whichever occurs first.

Authority: 90-6-309, MCA; ARM 8.104.214.

_____ g. The approved plan is ready to be implemented. The developer is in compliance with this condition of the operating permit.

Authority: 82-4-335, MCA.

****

5. IMPLEMENTATION OF AN APPROVED IMPACT PLAN

****

_____ a. The governing body of each local government unit entitled to receive impact payments under the approved plan:

(i) establishes an impact fund;

(ii) budgets or amends its budget to provide for the receipt and expenditure of impact monies through the impact fund; and

(iii) each fiscal year provides the Board with a copy of its budget or amended budget and a copy of the resolution by which it adopts the budget or budget amendment.

Authority: 90-6-307 and 90-6-323, MCA; ARM 8.104.211.

_____ b. After the Department of State Lands grants permission to the developer to commence operation, the governing body of the

county, on behalf of all local government units in the county, requests the developer to prepay property taxes as specified in the impact plan.

In addition, each local government unit requests its individual impact payments from the developer, according to the schedule provided in the impact plan.

The local government unit provides the Board with a copy of each request for payment.

Authority: 90-6-307 and 90-6-309, MCA; ARM 8.104.211.

_____ c. The developer makes required payments directly to the local government unit or through the Board, or as specified in the impact plan.

The Board deposits pass-through payments into the Hard-Rock Mining Impact Pass-Through Account.

If the plan provides for the developer to make payments directly to the local government unit, (a) the developer makes all tax prepayments through the County Treasurer to the credit of the impact fund of the appropriate local government unit, and (b) the developer and the local government unit each issue to the Board written verification of each payment and its intended use in compliance with the impact plan. See Appendix XI.

Authority: 90-6-304, MCA; 90-6-305, MCA; 90-6-307, MCA; 90-6-309, MCA; ARM 8.104.211.

_____ d. If payment is made through the Board, the local government (a) makes a written request to Board to transmit the payment to local government and (b) provides the Board with documentation that the payment will be used for purposes specified in the impact plan.

The local government request for payment from the developer, the request for transmittal of payment by the Board, and the verification that the payment will be used for the purpose identified in the plan may all be included in a single document from the local governing body. See Appendix XI.

Authority: 90-6-307, MCA; ARM 8.104.211.

_____ e. Following receipt of payment from the developer and of appropriate documentation from the local government unit, the Board transmits payments as requested by the local government unit. The Board transmits all tax prepayments through the county treasurer to the credit of the impact fund of the appropriate local government unit.

Authority: 90-6-307, MCA; ARM 8.104.211.

_____ f. The developer notifies the Board and the affected local government units within 30 days of the occurrence of key events or circumstances specified in the impact plan, including the commencement of "production" and "commercial production," as these terms are defined in the plan.

Authority: 90-6-309, MCA; 90-6-311, MCA; ARM 8.104.203.

_____ g. Each fiscal year after the mine commences production, the local government unit calculates the portion of prepaid tax that is to be credited to the developer and credits the appropriate amount, provided that tax credits: (a) do not extend beyond the productive life of the mine, (b) do not exceed the developer's tax obligation in any given year, (c) do not cause a reduction in service levels, and (d) do not shift the increased capital and net operating costs resulting from the development to other local taxpayers.

Plans submitted prior to July 1, 1985, are subject to the requirements of the tax crediting formula established in the 1981 Act. Plans submitted after July 1, 1985, are to specify the method for providing tax credits. See Appendix XII.

Authority: 90-6-301 and 90-6-309, MCA; Board policy.

_____ h. When a need for new school facilities has been determined, school district trustees may enter into a written agreement with the developer under which the developer assumes financial responsibility for an education impact bond used to finance the facilities. The agreement must provide for a guarantee of the payment of the principal and interest of the bond.

The bond becomes a financial liability only against the taxable valuation of the developer, not against the tax base of the school district as a whole. It does not affect the indebtedness or debt limits of the district.

The board of trustees of the district levy such taxes against the taxable valuation of the development such taxes as are needed to retire the education impact bond.

Authority: 90-6-310, MCA.

****

6. TAX BASE SHARING

****

When the Board notifies the Department of Revenue that an impact plan identifies a jurisdictional revenue disparity, the Department of Revenue implements the tax base sharing provisions of Part 4, Chapter 6, Title 90, MCA.

_____ a. On or before May 1 of each year the developer conducts an employee survey to determine the place of residence of all

employees at the mineral development and of their school-age children. The employee survey encompasses all persons, both inmigrants and local residents, who are employed by the developer, its contractors and subcontractors in the construction or operation of the mine and associated milling facility.

The developer provides a report on its employee survey to the Department of Revenue and its agent, the county assessor. This report identifies the number and place of residence of all employees at the mineral development and the number and place of residence of their school age children.

Authority: 90-6-401 to 90-6-405, MCA.

_____ b. Based on the number and place of residence of employees their school age children, the county assessor allocates among affected counties, municipalities, and school districts the increase in taxable valuation of the mineral development which occurs after the permit is issued.

Authority: 90-6-403 and 404, MCA.

See Appendix XIII for a more detailed explanation and outline of tax base sharing procedures.

****

7. ENFORCING THE DEVELOPER'S COMMITMENTS

****

_____ a. The Board must notify the Department of State Lands of any failure by the developer to comply with the commitments and time schedule in the approved plan, with the provisions of section 90-6-307, MCA, or with the review and implementation requirements of the Impact Act and the Tax Base Sharing Act.

Authority: 82-4-335, MCA; 90-6-307, MCA.

_____ b. If a permittee fails to comply with its written guarantee, its commitments according to the schedule provided in the impact plan, or the review and implementation requirements in Title 90, Parts 3 and 4, the Department must suspend the developer's operating permit until the Board provides written notice to the Department that the permittee is in compliance.

Authority: 82-4-335, MCA; 90-6-307, MCA.

_____ c. When the Board determines that the developer is again complying with the review and implementation requirements in Parts 3 and 4, of Title 90, Chapter 6, the Board notifies the Department of State Lands in writing. The Department then reinstates the developer's operating permit.

Authority: 82-4-335, MCA; 90-6-307, MCA.

_____ d. If the developer fails to prepay taxes as provided by the approved plan, the Board may draw upon the financial guarantee to make the required payments.

Authority: 90-6-309, MCA; ARM 8.104.214.

****

8. AMENDING AN APPROVED IMPACT PLAN

****

_____ a. Under conditions specified in the approved plan itself or under conditions specified by statute, the governing body of the county or the developer may petition the Board to amend the plan. The county may petition to amend on its own behalf or on behalf of any affected local government unit within the county. The petition must contain an explanation of the need for the amendment, a statement of the facts and circumstances underlying the need for the amendment, a description of the corrective action proposed by the petitioner, and the information required by ARM 8.104.216.

If the petition is filed on behalf of a local government unit other than the county, it must bear the signatures of the governing body of the affected local government unit as well as those of the governing body of the county.

See Appendix XIV for the format for petitions to amend an approved impact plan.

Authority: 90-6-311, MCA; ARM 8.104.216.

_____ b. The developer and the governing body of the county may at any time join in a petition for amendment. If the petition is filed on behalf of a local government unit other than the county, it must also bear the signature of the governing body of the affected local government unit.

The procedural requirements are the same as for unilateral petitions to amend.

See Appendix XIV for the format for petitions to amend an approved impact plan.

Authority: 90-6-311, MCA; ARM 8.104.216; Board policy.

_____ c. The Board publishes notice of the petition in a newspaper of general circulation in the affected county within 10 days of receiving the petition.

Authority: 90-6-311, MCA.

_____ d. Within 60 days after publication of the notice, the local government or the developer notifies the Board in writing if it

objects to the petition and specifies the reasons why the plan should not be amended as proposed.

Authority: 90-6-311, MCA.

_____ e. If no objections are received within the 60-day review period, the Board amends the plan as proposed by the petitioner.

Authority: 90-6-311, MCA.

-- OR --

_____ f. Within 10 days of receiving an objection, the Board provides the petitioner with a copy of the objection.

Authority: 90-6-311, MCA.

_____ g. The petitioner and the objector try to resolve objections within 30 days after the expiration of the 60-day review period. If all objections are resolved within the review or negotiation period, the affected parties submit their signed, written agreement to the Board.

The plan is amended as concurred in by the affected parties.

Authority: 90-6-311, MCA; ARM 8.104.209; Board policy.

-- OR --

_____ h. If objections are not resolved by the petitioner and the objector within the 30 day negotiation period, the Board conducts a hearing in accordance with Montana Administrative Procedure Act. The hearing is held in the most affected county, as determined by the Board.

Authority: 90-6-311, MCA.

_____ i. Following the hearing, the Board issues its findings and amends the plan as necessary.

The Board serves its findings and the amendments to the plan on all affected local government units and developer.

Authority: 90-6-311, MCA; Board policy.

_____ j. Either the local government or the developer may request judicial review of the Board's determination in the district court of the judicial district in which the hearing was held.

Authority: 90-6-311, MCA.

_____ k. If a local government unit's objection or appeal is held to be valid and results in a remedial action being taken by the Board or court, the Board or court must award and the developer must

pay to the local government the reasonable costs and attorney fees associated with the administrative or judicial process.

Authority: 90-6-307, MCA.

****

9. IMPACT PLAN WAIVERS FOR LARGE-SCALE PERMITTEES

****

_____ a. Each mineral developer who applies for and receives a hard-rock mine operating permit on or after May 18, 1981, must send periodic employee reports to the Department of State Lands, as required by the Department.

In the report the developer states the number of persons it and its contractors employed at the mine and mill in the construction and operation of the development during the preceding year and the number they expect to employ in the coming year.

Authority: 82-4-339, MCA; 90-6-302, MCA; and 90-6-307, MCA.

_____ b. Whenever the Department determines that a permittee has become or will become a large-scale mineral developer as defined by 90-6-302, MCA, the Department immediately notifies the permittee, the Board, and the county or counties in which the mining operation is located of this fact.

The applicable definition of "large-scale" mineral development is the definition that was in effect when the permit was issued. The definition enacted in 1981 was amended effective July 1, 1985.

Authority: 82-4-339, MCA; 90-6-302, MCA.

_____ c. After being notified of the Department's determination, the large-scale permittee may petition the Board for a waiver of the impact plan requirement.

_____ d. The Board and the affected county or counties determine which local government units appear likely to be affected by the growth in employment at the mining operation.

Authority: 90-6-307, MCA; ARM 8.104.217.

_____ e. The Board provides notice of the petition and an opportunity for a hearing to the permittee and all affected local government units. The hearing, if requested, addresses whether the Board should grant or deny a waiver or conditional waiver from the impact plan requirements and may address the provisions which should be included in a conditional waiver.

Authority: 90-6-307, MCA; ARM 8.104.217; Board policy.

_____ f. If local government units and the permittee do not expect the increase in employment to result in a need to increase local government services or if they do not expect the increased need for services to result in increased costs to the non-developer taxpayer, they may notify the Board in writing to this effect.

Authority: 90-6-307, MCA; ARM 8.104.217.

_____ g. Following the hearing and receipt of written testimony, the Board determines whether to grant or deny a waiver and what, if any, conditions to impose on a waiver.

The Board will grant a waiver or a conditional waiver:

(a) if the permittee and the governing bodies of the affected local government units certify in writing that they do not anticipate a need to increase local government services and facilities as a result of the increase in employment, or that the anticipated increase in need for services and facilities will not result in an increase in local government costs to the non-developer taxpayer;

(b) if no local government unit requests that the Board deny the waiver or to require the impact plan; or

(c) if, after giving notice and holding a public hearing, if one has been requested, the Board deems it unlikely that any affected local government unit will experience adverse fiscal impacts as a result of the increase in employment or as a result of associated changes in the mining operation.

The Board provides a copy of the waiver, conditional waiver or denial of waiver to the permittee, the affected local government units and the Department of State Lands.

Authority: 90-6-307, MCA; ARM 8.104.217.

_____ h. Under the circumstances specified by statute or as provided in a conditional waiver, an affected local government unit may request that the Board revoke a waiver or conditional waiver.

When such a request is made, the Board may revoke a waiver: (a) as provided in a conditional waiver, (b) if the developer fails to comply with a conditional waiver, or (c) if the permittee and contractors at the mineral development increase their payrolls from the date of the waiver by 75 or more persons.

Authority: 90-6-307, MCA.

_____ i. The Board notifies the permittee and affected local government units of the request to revoke a waiver or conditional waiver and gives them an opportunity for a hearing on the request.

Following the hearing, if one has been requested, or at the expiration of the time during which a hearing might have been requested, the Board determines whether to revoke the waiver or conditional waiver.

The Board notifies the permittee, the affected local government units and the Board of Land Commissioners in writing of the revocation of any waiver.

Authority: 90-6-307, MCA.

_____ j. If the Board denies or revokes a waiver, the permittee must comply with the impact plan requirements of Title 90, Chapter 6, Parts 3 and 4.

_____ k. Within 6 months of when the permittee receives notice from the Department of State Lands that it is or is expected to become a large-scale mineral developer, the permittee must file proof with the Department that it has been granted a waiver by the Board or has filed an impact plan with the Board, as required by 90-6-307, MCA.

Within 6 months of receiving notice from the Department, the Board must also certify to the Department either that it has granted the waiver or that the permittee has filed an impact plan, as provided by 90-6-307, MCA.

Authority: 82-4-335, MCA; 90-6-307, MCA; ARM 8.104.217.

_____ l. If a permittee fails to comply with its commitments in an approved impact plan or with the terms of a conditional waiver, the affected local government unit notifies the Board.

When a permittee fails to comply with the impact plan review and implementation requirements of Title 90, Chapter 6, Parts 3 and 4, or with its commitments in a conditional waiver, the Board notifies the Board of Land Commissioners of the failure to comply.

Authority: 82-4-335, MCA; 90-6-307, MCA; Board policy.

_____ m. The Board of Land Commissioners must suspend the operating permit of a permittee that fails to file the required proof or that fails to comply with the review and implementation requirements of Title 90, Chapter 6, Parts 3 and 4, including commitments in an approved plan or in a conditional waiver.

Authority: 82-4-335, MCA.

_____ n. The Board certifies to the Board of Land Commissioners when the Board determines that the permittee is in compliance with requirements of the Impact and Tax Base Sharing Acts, including the requirements of an impact plan, waiver or conditional waiver.

Authority: 82-4-335, MCA; 90-6-307, MCA; Board policy.

_____ o. Following the Board's certification that the permittee is again in compliance with the requirements of Title 90, Chapter 6, Parts 3 and 4, the Board of Land Commissioners reinstates the operating permit.

Authority: 82-4-335, MCA.

****

10. MITIGATING IMPACTS FROM MINE WORKFORCE REDUCTION OR CLOSURE

****

To help mitigate the fiscal and economic impacts resulting from mine workforce reduction and mine closure, the Impact Act establishes a Hard-Rock Mining Impact Trust Account. The trust account is funded by an allocation of 33 percent of the annual revenue from the metal mines license tax. The procedures and requirements of the grant-loan program are discussed in more detail in Chapter VI.

The Board allocates the Trust Account revenue into a separate subaccount for each county with a metal mines license taxpaying mine.

The Board determines when a mine that pays metal mines license tax has ceased operations or has experienced a 50 percent reduction in workforce.

When this occurs, the Board designates the local government units that will be adversely affected by the closure or 50 percent reduction workforce of any hard-rock mine that pays the metal mines license tax.

The designated local government units may apply to the Board for grants or loans to stabilize mill levies, retire debts, promote diversification and development of the economic base, attract new industry, or expand the employment base of the impact area.

From the appropriate subaccount the Board may award up to 50 percent of the available money to mitigate local government fiscal impacts and must award at least 50 percent for economic development purposes.

The Board provides an annual report on the status of the trust account to the governing body of each county in which a metal mines license taxpaying mine is located and to the manager of each affected mine.

The Board provides an annual report to the Legislature of any expenditures from the appropriation for the Impact Mitigation and Trust Account.

Authority: 15-37-115, MCA; 90-6-304 through 90-6-306, MCA; 90-6-321 and 322, MCA; Board policy, including proposed rules; HB645, 50th Legislative Session, 1987.

CHAPTER VI

HARD-ROCK MINING IMPACT TRUST ACCOUNT GRANT-LOAN PROGRAM TO MITIGATE IMPACTS FROM MINE WORKFORCE REDUCTION AND MINE CLOSURE

INTRODUCTION

When the Montana Legislature enacted HB 718 in 1981, its primary concern was to provide for the mitigation of local government impacts resulting from the development of new, large-scale hard-rock mines. The original Hard-Rock Mining Impact Act served a twofold purpose: (1) to ensure that local government services required as a result of new, large-scale mineral developments would be provided when and where needed and (2) to ensure that local taxpayers would not be burdened with any consequent increase in capital and net operating costs to local government units.

Concerned about a number of unresolved issues, the Legislature also asked the Environmental Quality Council and the Revenue Oversight Committee to conduct an interim study addressing both community impacts resulting from hard-rock mines and State taxation of the hard-rock mining industry. As a result, during the 1981-1983 legislative interim, an EQC/ROC joint subcommittee held public meetings in communities throughout central and western Montana.

Among the recurring themes at these meetings were local government and citizen concerns about the eventual impacts of mine shutdowns and closures and mining industry concerns about tax rates and the cumulative effect of multiple taxes and taxes based on gross proceeds. In 1983 the Legislature tackled both issues, to a limited extent, in a single bill, HB 446.

THE METAL MINES LICENSE TAX

At the request of the mining industry, HB 446 revised metal mines license tax rates, effective January 1, 1985, by eliminating the tax for gross proceeds of $250,000 or less; reducing rates for increments between $250,000 and $1,000,000; and slightly increasing the rate for that portion of gross proceeds in excess of $1,000,000. In order to assist local government units and communities adversely affected by a workforce reduction or mine closure, the bill then allocated 33 percent of the annual revenue from the metal mines license tax to the Hard-Rock Mining Impact Trust Account for a grant-loan program to be administered by the Hard-Rock Mining Impact Board.

THE HARD-ROCK MINING IMPACT TRUST ACCOUNT

This bill directed the Board to segregate the Trust Account revenue, less administrative and operating expenses, into individual subaccounts for each county in which a metal mines taxpaying mine is located. The allocation is based on the proportionate amount of revenue paid by the mine or mines in each county. The money is held in the Trust subaccounts until expended to mitigate impacts of mine workforce reduction or closure. Interest on the Trust Account is credited to the State general fund.

MINE WORKFORCE REDUCTION AND CLOSURE AND THE TRUST ACCOUNT GRANT-LOAN PROGRAM

The Trust Account grant-loan program is intended to mitigate adverse fiscal and economic impacts resulting from the workforce reduction or closure of mines that have paid metal mines license taxes, based on production after December 31, 1984. Unlike the impact plan program, the grant-loan program operates regardless of the size of the mine or when it received its operating permit.

The Board is to determine when a metal mines license taxpaying mine has ceased all mining-related activity or has experienced a 50 percent or greater reduction in full-time equivalent workforce, compared with employment during the preceding five years. After making this determination, the Board designates those local government units and areas that will be adversely affected by the mine workforce reduction or closure. Designated local government units may apply to the Board for grants and loans from the appropriate county subaccount to help mitigate adverse fiscal and economic impacts in the impact area.

Specific statutes, proposed rules and policies relevant to the implementation of the Hard-Rock Mining Impact Trust Account and grant-loan program, are contained in 15-37-117, MCA; and 90-6-304 through 90-6-306, MCA; 90-6-321 through 323, MCA; and in the Board's Statement of Policies, which includes the proposed rules.

In determining whether a mining operation has experienced a 50 percent reduction in "full-time equivalent workforce" or has "permanently ceased all mining-related operation," the Board interprets the operative terms of section 90-6-321, MCA, as follows:

(1) "All mining-related activity" refers to mining and to associated milling that occurs in close proximity to the mine site.

(2) "All mining-related activity" does not include post-mining reclamation activities. The commencement of final, permanent post-mining reclamation is considered an indication that a permanent cessation of mining-related activity has occurred.

(3) "Full-time equivalent workforce" has the meaning assigned to this term by the federal Wage and Hour Act and by the Montana Department of Labor and Industry.

The Board will initiate its determination of whether a 50 percent workforce reduction or mine closure has occurred upon receiving a written request to do so from the affected mineral developer or the governing body of a potentially affected local government unit. If the Board determines that a workforce reduction or mine closure has occurred, it will notify the mineral developer, the county and school districts in which the mine is located and the municipality nearest to the mine. The Board will also publish notice of its determination in a newspaper of general circulation in the affected county or counties. The notice will include a brief description of the grant-loan program.

DESIGNATION OF AFFECTED LOCAL GOVERNMENT UNITS AND IMPACT AREAS

After the Board determines that the workforce reduction or mine closure has occurred, any local government unit or group of local government units may apply to the Board for designation as being impacted by the reduction or closure. The local government applicant for designation must demonstrate that it has experienced or will experience adverse fiscal or economic impacts as a result of the workforce reduction or mine closure. The Board may designate both individual local government units and geographical areas as impacted.

The Board will consider for designation any local government unit or multi-jurisdictional area which:

(a) includes the affected mineral development in its taxing jurisdiction and is likely to experience a reduction in taxable valuation as a result of the cessation or reduction in mining-related activity;

(b) is the place of residence for mine-related employees and provides services to those employees and their families;

(c) is a school district in which children of mine-related employees are enrolled or which may experience a consequent loss of revenue from the state school foundation program in amounts greater than related reductions in operating costs;

(d) may experience a temporary need to provide additional services related to the effects of the reduction or cessation of mining-related activities;

(e) has incurred bonded or other indebtedness as a result of serving the mine-related population;

(f) provides significant public or private sector services as a result of the mineral development;

(g) was designated as an affected local government unit in an approved impact plan; or

(h) can document a reasonable expectation of adverse fiscal or economic impact, including adverse impact to the local labor force.

Upon designating the affected local government units, the Board will notify the local government units that requested designation.

GRANTS AND LOANS

As provided by 90-6-321, MCA, designated local government units may apply for grants and loans for any of the following purposes:

(1) to pay for outstanding capital project bonds or other debts incurred at least 5 years prior to the cessation of mining activity or workforce reduction, as determined by the Board;

(2) to decrease unusually high property tax mill levies that are directly caused by the cessation or reduction of mining activity;

(3) to promote diversification and development of the economic base within a local government unit;

(4) to attract new industry to the impact area; or

(5) to provide cash incentives for expanding the employment base of the impact area.

The Act requires that at 50 percent of the money awarded must be used for economic development purposes, as specified in items (3), (4), and (5) above. No more than 50 percent may be used to reduce debt or to forestall excessive mill levies.

As needed, the Board will establish application periods within which to receive and review applications. Applications must be submitted to the Board no less than 60 days prior to the date on which the Board will consider applications for funding. At its discretion, the Board may grant exceptions for applications concerning imminent threats to public health, safety and welfare.

In applying for a grant or loan, the designated local government unit must provide the information listed in Appendix XVI. The Board will evaluate the individual and comparative merits of applications.

Upon receipt of applications to be considered during the review period, the Board will evaluate each application on the basis of the following criteria:.

(1) the criteria, including the 50 percent limitation, contained in 90-6-321, MCA, as noted above;

(2) the criteria specified in 90-6-306, MCA, and those listed below:

(a) local need;

(b) the severity of impact from mineral development workforce reduction or closure;

(c) the extent of local effort in meeting local needs; and

(d) the ability of the proposed project or expenditure to meet the identified need and to mitigate the adverse fiscal or economic impact of the workforce reduction or cessation of mining related activities.

(3) the availability of funds within the appropriate subaccount, subject to such limitations as may be prescribed by statute or imposed by the Board in consideration of anticipated future revenues and potential future need for assistance in the impact area;

(4) the merits of the application when considered in relation to other applications submitted during the same review period and to anticipated future demands upon the subaccount.

As indicated above, the Board may limit the amount of money to be awarded from the subaccount in any given review period, either because of the quality of applications submitted during that review period or because of potential future demands upon the subaccount. The future need must be considered because adverse fiscal and economic impacts may extend over a period of years following a workforce reduction or mine closure and may be greater in later years than in earlier years.

After awarding a grant or loan, the Board will execute a contract with the recipient local government unit, specifying the terms and conditions of the award. When it awards a loan to a designated local government unit, the Board will establish the interest rate and term of the loan. Principal and interest received in repayment of a loan will be returned to the subaccount from which the loan was made.

Each year the Board provides a report on the status of the Hard-Rock Mining Impact Trust Account to the counties for which subaccounts have been established. The Board also sends the report to other interested persons, including the managers of mines that paid metal mines license tax for the preceding calendar year. The Board reports any expenditures from the subaccounts to the Legislature.

Questions about the Hard-Rock Mining Impact Trust Account and the grant-loan program may be addressed to the Hard-Rock Mining Impact Board:

Hard-Rock Mining Impact Board
Montana Department of Commerce
Cogswell Building, Room C-211
Capitol Station
Helena, Montana 59620
(406) 444-3779

APPENDICES

APPENDIX I -- CHECKLIST FOR REQUIREMENTS FOR A HARD-ROCK MINING IMPACT PLAN

APPENDIX II -- KEY DEFINITIONS AND EVENTS

APPENDIX III -- SAMPLE TABLE OF CONTENTS AND INDEX

APPENDIX IV -- SCHEDULE OF IMPACT PAYMENTS

APPENDIX V -- A. STATEMENT OF CONDITIONS AND ASSUMPTIONS ON WHICH PROJECTIONS ARE BASED
B. CONDITIONS FOR IMPACT PLAN AMENDMENT AND MONITORING

APPENDIX VI -- A. PROOF OF RECEIPT OF PLAN, PUBLIC NOTICES AND PUBLIC HEARING
B. TIMETABLE FOR REVIEW

APPENDIX VII -- OBJECTION TO A PROPOSED HARD-ROCK MINING IMPACT PLAN

APPENDIX VIII -- WRITTEN GUARANTEE OF COMPLIANCE

APPENDIX IX -- FINANCIAL GUARANTEE
A. LETTER OF CREDIT
B. ESCROW AGREEMENT

APPENDIX X -- SAMPLE BUDGET: STILLWATER COUNTY IMPACT YEAR TWO

APPENDIX XI -- IMPACT PLAN PAYMENTS

APPENDIX XII -- TAX PREPAYMENT AND TAX CREDITING

APPENDIX XIII -- IMPLEMENTATION OF THE PROPERTY TAX BASE SHARING ACT

APPENDIX XIV -- PETITION TO AMEND AN APPROVED HARD-ROCK MINING IMPACT PLAN

APPENDIX XV -- OBJECTION TO A PROPOSED AMENDMENT TO AN APPROVED HARD-ROCK MINING IMPACT PLAN

APPENDICES XVI - XIX [RESERVED]

APPENDIX XXX -- APPLICATION FORM FOR GRANT OR LOAN FROM THE HARD-ROCK MINING IMPACT TRUST ACCOUNT PROGRAM

CHECKLIST FOR REQUIREMENTS FOR A HARD-ROCK MINING IMPACT PLAN

CONTENTS OF A PLAN: An impact plan may consist of more than what is required by statute, but not less. The impact plan should be compatible with the community's overall planning efforts.

For purposes of the impact plan "local government unit" means a county, city, town, school district, or any of the following independent special districts: (a) rural fire district; (b) public hospital district; (c) refuse disposal district; (d) county water district; or (e) county sewer district.

The minimum specific statutory requirements for the fiscal impact plan are detailed in sections (1) and (2) of 90-6-307, MCA. Other requirements are summarized below and in ARM 8.104.203.

(1) The impact plan must include:

_____ a. a timetable for development, including the opening date of the development and anticipated closing date;

_____ b. the estimated number of persons coming into the impacted area as a result of the development; [The mineral developer and the affected local government units must first define what categories of people are encompassed by this estimate.]

_____ c. the increased capital and operating cost to local government units for providing services, including but not limited to police and fire protection, sewage, water treatment, schools, road construction and upkeep, education, and medical care, which can be expected as a result of the development;

_____ d. the financial or other assistance the developer will give to local government units to meet the increased need for services.

(2) In the impact plan, the developer must:

_____ a. commit itself to pay all of the increased capital and net operating cost to local government units that will be a result of the development, either from tax prepayments, as provided in 90-6-309, special industrial educational impact bonds, as provided in 90-6-310, or other funds obtained from the developer, and

_____ b. provide a schedule within which it will meet these commitments.

If taxes are to be prepaid or tax base sharing is to occur, additional information will be required in the plan:

_____ (1) If the plan provides for the prepayment of property taxes, the plan must specify the conditions and method by which these taxes are to be credited.

_____ (2) If the plan identifies a jurisdictional revenue disparity, the plan must predict the place of residence of employees and the district of enrollment of their school-age children.

(3) The plan must define the following terms in a manner consistent with common usage and appropriate to the specific large-scale mineral development:

_____ (a) if property taxes are to be prepaid, "start of production"; and
_____ (b) if property taxes are to be prepaid and the plan was submitted prior to July 1, 1985, "commencement of mining."

_____ (4) Each plans must define "commercial production."

_____ (5) In the plan the developer must commit to notify the board and the affected local government units within 30 days of each applicable date identified in (3) and (4) above.

_____ (6) Each plan must specify whether impact payments will be made directly to local government units or transmitted through the Board. If payments are transmitted through the Board, the plan should also specify how any accrued interest is to be used.

FORMAT OF PLAN: The Board has adopted administrative rules that include the following requirements for the format of an impact plan:

(1) The format of the plan must contain the following elements:
_____ (a) the name, address and phone number of the developer's contact person;
_____ (b) a brief summary of the impact plan [which should include the developer's commitments and schedule of payments];
_____ (c) a list of the local government units which the developer believes might potentially be affected by the development;
_____ (d) a table of contents;
_____ (e) numbered pages throughout.

_____ (2) The plan must be bound in a manner that will allow for ready removal and insertion of pages.

_____ (3) The format and substance of the plan must allow for a ready review and analysis of the plan, its several parts, and their relationship to each other.

PROCEDURAL REQUIREMENTS:

_____ **Notification and Submission of Plan.** The developer must submit 12 copies to the Board and a sufficient number of copies to each affected county for distribution. After the plan has been received, the governing body of the county will publish notice of its receipt in a newspaper of general circulation in the county. The Board asks that the notice appear in large, readable format.

_____ **Proof of Submission of Plan to Affected Counties.** The Board will accept as proof of the date of receipt of an impact plan by an affected county a dated receipt, signed by an authorized representative of the county, confirming delivery of the plan by registered mail, hand delivery, or otherwise or an acknowledged statement by the developer certifying the date of delivery of the plan to the county.

KEY DEFINITIONS AND EVENTS

Sections 90-6-302 and 90-6-402, MCA define certain terms in the Impact Act and the Tax Base Sharing Act, respectively. Some definitions are the same in both Acts and some differ.

ARM 8.104.203A defines "impacted area." The plan must identify the specitic affected local government units encompassed by the impact plan.

If taxes are to be prepaid and credited, ARM 8.104.203 requires the impact plan to define "start of production" and "commencement of mining," as appropriate to the mining project and the impact plan. All plans must define "commercial production," a term critical to the statutory provisions for amending an impact plan.

In the plan the developer must commit to notify the Board and affected local government units within 30 days of the start of production, commencement of mining, and commencement of commercial production, as defined in the plan.

In preparing the plan, the developer and local government units may wish to define other terms and key events to ensure the clarity of the impact plan. If so, they should also identify their respective responsibilities for determining when key events occur and for notifying the Board and other parties to the plan. If some definitions in the plan apply only to the impact plan or only to tax base sharing, this distinction should be made clear.

In addition, the plan must identify the affected local government units encompassed by the impact plan.

Following are examples of the types of definitions used in impact plans:

PLAN A:

For the purposes of this Impact Plan:

(1) "Mineral Employee" means the total of those employees of the developer, developer's contractors and developer-related employees who work at the mine site.

(2) "In-Migrating Mineral Employees" means that portion of mineral employment which establishes residence in an affected local governmental unit within one year prior to, or anytime after their date of hire.

(3) "In-Migrating Secondary Employees" means those persons who move into the county to fill secondary jobs created by the new demand for goods and services by the mineral development and in-migrating mineral employees.

(4) "Impact Population" means the total new population, in the county or a local governmental unit thereof, generated by in-migrating mineral employment and in-migrating secondary employment.

(5) "Impact Costs" means those additional costs projected to be incurred by local units of government for providing services to the impact population and the developer.

(6) "Impact Revenues" means those additional tax revenues projected to be generated by the impact population and the developer.

(7) "Commencement of Development," "Commencement of Mining" and "Commencement of Mining Operations" each means the date on which the developer initiates on-site disturbance directly related to the beginning of mine development or the construction of the mine and associated mill facilities under an operating permit issued by the Department of State Lands. The developer will notify the Board and the County of this date anytime prior to, or within 30 days following, commencement of development.

(8) "Begins Commercial Production" for the purpose of 90-6-311, MCA, means the date on which the developer first ships mineral concentrate from its mill facility for further processing. The developer will give notice of this date to the Board, County and other affected units of local government any time prior to, or within 30 days after, such shipment.

PLAN B:

(1) "Impact Assistance Contingency Fund" means a fund of $10,000.00 established by the developer under the control of the governing body of the county as provided in the plan. The fund will be used to provide additional impact assistance payments to address problems or pay costs caused by the development or the impact population which were not anticipated by the Plan at the time it was approved. Eligible applicants for funds include all affected jurisdictions in the county, including the several departments of county government, the city volunteer fire department, the quick response units, and the volunteer ambulance service.

(2) "Impact Period" means the time period commencing 60 days prior to the start of construction at the developer's site and continuing until the developer has paid its first property tax assessment following the start of commercial mining operations.

(3) "In-migrant Mine Employee" means any employee of developer, its contractors or subcontractors who did not reside in the affected jurisdiction for a six-month period prior to being hired to work for the mineral development.

(4) "In-migrant Mine Employee Family" means the spouse, children, wards, relatives and other unrelated individuals who continually reside with an in-migrant mine employee and thereby constitute a single household.

(5) "In-migrant Mine Employee Student" means the school-age child or ward of an in-migrant mine employee.

SAMPLE TABLE OF CONTENTS AND INDEX

		Page
1.0	Introduction	1
	1.1 Definitions	1
	1.2 Projections	4
	1.3 Impact Mitigation Financing	6
2.0	Project Description	7
	2.1 Company	7
	2.2 Project Location	7
	2.3 Production and Mining Method	7
	2.4 Duration and Schedule	7
3.0	Employment, Population and Population Distribution Projections	9
	3.1 Employment and Impact Population	9
	3.2 Impact Population Distribution	13
	3.3 Baseline Projections	17
4.0	Stillwater County	18
	4.1 County Budget Process	18
	4.2 Impact Needs and Costs	19
	4.2.1 General Fund	19
	4.2.2 Road Fund	21
	4.2.3 Bridge Fund	22
	4.2.4 Poor Fund	24
	4.2.5 Other Funds	24
	4.2.6 Solid Waste	24
	4.2.7 Absarokee Sewer Districts	25
	4.3 Impact Revenues	25
	4.3.1 General Fund	29
	4.3.2 Road Fund	29
	4.3.3 Bridge Fund	30
	4.3.4 Poor Fund	30
	4.3.5 All Other Funds	30
	4.3.6 Solid Waste District	30
	4.3.7 Other Revenues	30
	4.3.8 Total SMC Revenues	31
	4.4 Net Costs	31
	4.5 Methods of Assistance	33
	4.5.1 Tax Prepayment Schedule	33
	4.5.2 Tax Prepayment Credit	34
	4.5.3 Other Means of Assistance	35
	4.5.3.1 Absarokee Sewer System	35
	4.5.3.2 FAS 419 Improvements	35
	4.5.3.3 Welfare Medical Assistance	36
5.0	Town of Columbus	38
	5.1 Costs	38
	5.1.1 General Fund	38
	5.1.1.1 General Government	38
	5.1.1.2 Streets	38
	5.1.1.3 Parks and Swimming Pool	40
	5.1.1.4 Total General Fund	40
	5.1.2 Water System	40
	5.1.3 Sewer System	41
	5.1.4 Solid Waste	42
	5.2 Impact Revenues	42
	5.2.1 General Fund	42
	5.2.2 Water Revenues	43
	5.2.3 Sewer Revenues	43
	5.2.4 Solid Waste Collection	43
	5.3 Net Costs	45
	5.3.1 General Purpose	45
	5.3.2 Water Supply	45
	5.3.3 Sewer System	45
	5.3.4 Solid Waste Disposal	46
	5.4 Methods of Assistance	47
	5.4.1 Tax Prepayment Schedule	47
	5.4.2 Mineral Employment Monitoring	48
	5.4.3 Tax Prepayment Credit	48
	5.4.4 Other Means of Assistance	48

6.0 School Enrollment 50

6.1 In-Migrating School-Age Children 50
6.2 Elementary School Enrollment 50
6.3 High School Enrollment 50

7.0 Absarokee Elementary School (District 52-C) 54

7.1 Background 54
7.2 Impact Requirements 54
7.3 Costs 55

7.3.1 General Fund 55
7.3.2 Transportation Fund 59
7.3.3 Debt Service Fund, Capital Facilities 59

7.4 Impact Revenues 59
7.5 Net Costs 61
7.6 Methods of Assistance 61

7.6.1 Tax Prepayment Schedule 62
7.6.2 In-Migrating Mineral Development Student Enrollment Monitoring 63
7.6.3 Tax Prepayment Credit 63

7.7 Other Means of Assistance 63

8.0 Absarokee High School (District 52) 65

8.1 Description 65
8.2 Impact Needs 65
8.3 Impact Costs 65

8.3.1 General Fund 65

8.4 Impact Revenues 65
8.5 Net Costs 69
8.6 Methods of Assistance 69

8.6.1 Tax Prepayment Schedule 70
8.6.2 In-Migrating Mineral Development Student Enrollment Monitoring 70
8.6.3 Tax Prepayment Credit 71

9.0 Columbus Elementary School (District 6) 72

9.1 Background 72
9.2 Impact Needs 72
9.3 Impact Costs 74

9.3.1 General Fund 74
9.3.2 Transportation Fund 74
9.3.3 Debt Service Fund - Capital Facilities 74

9.4 Impact Revenues 76
9.5 Net Costs and Revenues 76
9.6 Methods of Assistance 76

9.6.1 Tax Prepayment 78
9.6.2 In-Migrating Mineral Development Student Enrollment Monitoring 79
9.6.3 Tax Prepayment Credit 79

9.7 Other Means of Assistance 79

10.0 Columbus High School (District 6) 81

10.1 Background 81
10.2 Impact Needs and Costs 81
10.3 Impact Revenues 83
10.4 Net Impact Costs or Revenues 83
10.5 Methods of Assistance 85

10.5.1 Tax Prepayment Schedule 85
10.5.2 In-Migrating Mineral Development Student Enrollment Monitoring 85
10.5.3 Tax Prepayment Credit 85

11.0 Nye Elementary School (District 31) 86

11.1 Background 86
11.2 Impact Needs 86
11.3 Impact Revenues 86
11.4 Net Costs 89
11.5 Methods of Assistance 89

12.0 Fishtail Elementary School (District 13) 90

12.1 Background 90
12.2 Impact Requirements and Costs 90
12.3 Impact Revenues 90
12.4 Net Costs 90
12.5 Methods of Assistance 90

13.0 Absarokee Fire District 94

13.1 Background 94
13.2 Impact Needs and Costs 94

14.0 Conditions for Impact Plan Amendment 95

14.1 Amendments 95
14.2 Monitoring 96

APPENDIX A. Current Conditions and Assumptions for Projections

APPENDIX B. Financial Guarantee

APPENDIX C. Federal Highway Administration Reconnaissance Report Forest Highway 73

APPENDIX D. Montana Hard Rock Mining Impact Act, Montana Hard Rock Mining Impact Property Tax Base Sharing

SCHEDULE OF IMPACT PAYMENTS

SUMMARY
Stillwater Mining Company
Proposed Financial Mitigation

Governmental Unit	Financing Method	Trigger Mechanism	Amount by Anticipated Year of Payment 1	2	3	4
Stillwater County	Tax Prepayment					
	S-1	CD	$183,000			
	S-2	year after S-1		$ 196,000		
	S-3	year after S-2			$102,000	
	S-4	year after S-3				$ 12,000
FAS 419	Tax Prepayment	County receipt of matching funds + CD	Contingent amount: 20% of actual thru 1990 limited to $1.46M : 10% of actual thru 1995 limited to $.73M : 0% of actual after 1995			
Absarokee Sewer	Grant	CD	$200,000			
Welfare Medical	Tax Prepayment	CD	amount of claims under specific conditions			
Town of Columbus	Tax Prepayment					
	C-1	IMMEC > 10	$ 5,400			
	C-2	IMMEC > 20		$ 128,000		
	C-3	year after C-2			$ 3,200	
Sewer & Water	Grant	C-1 payment	$210,000	$ 210,000		
Absarokee Elem. SD	Tax Prepayment					
	AE-1	IMDS > 10&TE > 200	$ 70,000			
	AE-2	IMDS > 20&TE > 210		$ 30,000		
	AE-3	IMDS > 30&TE > 220			$ 27,000	
Classrooms	Special Bond	AE-1 payment	$320,000 (bond face value)			
Absarokee High SD	Tax Prepayment					
	AH-1	IMDS > 5&TE > 100	$ 9,000			
	AH-2	year after AH-1		$ 7,000		
Columbus Elem. SD	Tax Prepayment					
	CE-1	IMDS > 10&TE > 315	$ 36,100			
	CE-2	IMDS > 20&TE > 320		$ 20,000		
Classrooms	Special Bond	CE-1 payment	$470,000 (bond face value)			
Columbus High SD	Tax Prepayment	IMDS > 10&TE > 150	$ 26,000			
Nye School	Grant	CD	$ 1,000			
Fishtail School	Grant	CD	$ 1,000			
TOTAL (except contingent funding):			$1,531,500	$ 591,000	$ 132,200	$ 12,000
				$2,266,700		

CD = Commencement of Development
IMMEC = In-Migrating Mineral Employment residing in Columbus
IMDS = In-Migrating Mineral Development Student
TE = Total Enrollment

A. STATEMENT OF CONDITIONS AND ASSUMPTIONS ON WHICH PROJECTIONS ARE BASED

The following example is taken from the impact plan for the Stillwater Mining Company (SMC), Nye Project in Stillwater County:

A.1. Project Development

1. A 1,000 TPD mining development starting in 1985 or 1986 will be developed which will employ about 220 workers on an annual average once full production is achieved.

2. Construction workers at the job site may increase the annual average above the 220 long term operations worker level for one or two development years.

3. Taxable valuation added to the local tax rolls by developer will start at $900,000 in Year 1, increase to $1,900,000, $2,500,000, $3,400,000 and $3,700,000 in Years 2 through 5, respectively.

4. SMC would rely on private housing developers to add the needed housing for construction and operations workers and families.

5. SMC would not underwrite or provide busing service for employees.

A.2. Population

1. Of the total mineral employment, 46 percent (or approximately 100 persons) is assumed to be either local residents or workers who would commute from outside the county. Stillwater County currently has more than 200 unemployed workers who have applied for employment through the Job Service. Surrounding counties have unemployed workers who may be willing to commute.

Housing Development Associates, Bruce Finnie, the U. S. Bureau of Mines have all indicated that 40 to 50 percent local residents participating in the workforce is reasonable in Stillwater County.

2. Of the in-migrating mineral employees (54%), 20 percent would be single and 80 percent would have families averaging 3.0 dependents (Bruce Finnie; BMML; Bureau of Mines; Leistritz). Although a family size of 4.0 persons is higher than the Montana or County average, mining employees apparently have a larger average family size.

3. In Stillwater County each basic (or direct) job generates an average of 1.37 secondary jobs. However, most secondary jobs are filled by residents and dependents. Few secondary jobs pay salaries that would attract people to in-migrate. Fifteen percent of the secondary jobs are assumed to induce in-migration, because they require skills which may not be available in the county (e.g., teachers, deputies), and paid salaries sufficient to attract non-local persons.

4. Of the in-migrating secondary employees, 54 percent are assumed

to be single, 45 percent would be married with 2.5 dependents (approximately the state and county average family sizes).

5. The 1980 population of Stillwater County was 5,598; the US. Census Bureau estimates the 1982 population at 5,782. We assume the 1984 county population is 5,900.

The 1980 population of Columbus was 1,439; the Census Bureau estimate for 1982 was 1,465. We assume a 1984 population of 1,500. The increase in water and sewer meters is the primary basis for our estimate.

Stillwater County and Columbus have been increasing since 1980 at approximately 1 percent per year. Those units of government are projected to continue that growth without the mining project until "caps" of 6,700 and 1,700, respectively, are reached.

6. Absarokee's population was 767 in 1980. The 1984 population is assumed to be 775.

A.3. Population Distribution

1. Of the in-migrating population, 220 are expected to live in Absarokee or the immediate vicinity, 200 in Columbus. Absarokee's proximity to the mine and its community amenities account for the majority of the new population centering in Absarokee. The road between Columbus and Absarokee will act as a deterrent to a higher settlement rate in Columbus. Although Fishtail and Nye are closer to the mining project, the schools and other community amenities in Absarokee are expected to attract employees.

2. Absarokee's growth will be constrained by its limited sewage treatment system capacity and its covenants precluding the placement of mobile homes on existing lots.

3. It has been assumed that no new mobile home developments will be installed along the FAS 419 corridor between Fishtail and the project site.

A.4. School Enrollment and Distribution

1. In-migrating mining workers with families are assumed to have an average of two children per family. In-migrating secondary workers with families are assumed to have 1.5 children per family.

2. Of the total children 0-18, 76 percent are assumed to be school age: 53 percent in elementary (K-8), 23 percent in high school (grades 9-12).

3. BMML identified a "bulge" in baseline school age children who were born 1975 to 1979. The "bulge" moves through the grades, and is reflected in both the baseline (without mining) enrollments and the enrollment projections with the mine.

4. The baseline enrollment for Absarokee and Columbus were assumed to increase slightly over the planning period.

Nye and Fishtail school enrollments were projected to remain near their current levels because of uncertainty about any future trends.

5. The in-migrating elementary students are expected to be distributed less than 40 percent in Absarokee, 40 percent in Columbus, 3 percent in Nye and 2 percent in Fishtail. We assume that the current pattern of students residing in the Fishtail and Nye school districts attending Absarokee will continue. We also assume that Absarokee Elementary School will expand to handle the total increases and will not deny attendance by students from the Nye and Fishtail school districts.

The projected percentages for Absarokee and Columbus are higher than the expected distribution of residences within the school districts, but a significant portion of Fishtail and Nye students are anticipated to attend the larger schools.

6. In-migrating high school students are assumed to attend the high school in the district in which they reside.

7. Baseline high school enrollments are projected to increase slightly from the current enrollments during the 25 year planning period.

A.5. Stillwater County--Needs, Costs, and Revenue Assumptions

1. General Fund: The County Commissioners and Planning Department each will require one FTE during the first three years. Salary, benefits and expenses per FTE totals $30,000.

The sanitarian will require a per capita increase over the first three years for additional travel and telephone costs.

The Sheriff's Department will require an additional deputy. One deputy will cost $30,000 per year. The vehicle will cost $2,000 per year.

2. Road Fund: Since SMC generated use of FAS 419 is forecast to be 20 percent of total use, developer's impact costs for any reconstruction or maintenance is limited to 20 percent of total costs.

The company costs for maintaining streets in Absarokee for 220 impact residents (assuming the sewage treatment plant is replaced) would be $16 per capita.

The mine would require a sand shed at Fishtail (at $15,000) and a new sanding truck and a maintenance pickup (at a total of $43,000, or $8,600 per year, assuming a five year life). One additional FTE will be needed at $30,000 per year.

3. Bridge Fund: Developer would generate 40 percent of the need for bridge maintenance on FAS 419.

4. Solid Waste: Four additional green boxes would be needed in the Absarokee area to serve the impact population and two additional boxes would be needed at Nye to serve the mineral operation. The annual capital and replacement costs would be $460 per year. Disposal, at $16

per ton and .56 tons per person per year could, cost approximately $9 per capita per year.

5. Stillwater County Impact Revenues: County licenses, fees, fines and permits, state shared revenues and federal revenue sharing are assumed to increase on a direct per capita basis.

The taxable valuation for the road fund excludes the Town of Columbus. The taxable valuation for all other funds includes the valuation within Columbus.

Thus, the road fund receives property taxes on only 80 percent of the mineral taxable valuation, assuming 20 percent of the mine workers reside in the Town of Columbus.

The taxable valuation is lagged one year; tax revenues are lagged an additional year.

A.6. Town of Columbus--Needs, Costs, and Revenue Assumptions

1. General Government: Costs of police court and Town attorney will increase in proportion to the increase in population.

2. Streets: Maintenance and operation costs will increase in proportion to the increase in population.

The costs of paving residential streets to serve 26 single family residence (assumed to locate in the north and northeast part of town) will be $48,000, at $54/linear foot and lots averaging 75 feet in frontage. The costs of constructing gravel streets for 7 mobile home lots, averaging 20 foot frontage and costs $17.50 per linear foot.

3. Parks: Maintenance and operation costs will increase in proportion to the increase in population. No new parts or playgrounds are needed.

4. Swimming Pool: Maintenance and operation costs will increase in proportion to the increase in population.

5. Solid Waste: Disposal of solid waste costs the Town $16 per ton; annual volume of waste is .56 tons per capita, or an annual cost of $9 per capita basis (because of added pickups, wear, and time).

6. Water System: Maintenance and operation costs (at $92 per household) and replacement costs (at $23 per household) will increase in proportion to the increase in number of households.

7. Sewer System: Maintenance and operation costs (at $30 per household) and replacement costs (at $5 per household) will increase in proportion to the increase in number of households.

Construction of new sewer lines will cost the company $24,000 at one half of 1,800 feet of replacement lines costing $27 per foot.

Town of Columbus Revenues

1. Town fees, fines and licenses will increase in proportion to the increase in population.

2. State and federal shared revenues will increase in proportion to the increase in population.

3. Because more than 20 percent of the impact population is projected to reside in Columbus, 20 percent of the developer's mining taxable valuation will be realized by the Town of Columbus. Increased taxable valuation from new residences will average $1,818 during the first two years, and $2,212 per residence thereafter (during operation). Commercial taxable valuation will average 13 percent of the residential tax able valuation.

4. The town's 1984 mill levy of 79.33 mills is used.

A.7. Absarokee, Columbus, Nye and Fishtail Schools -- Needs, Costs and Revenue Assumptions

1. Costs for books and supplies, special education, athletics and extracurricular activities will increase on a direct per student basis.

2. A school district will receive increased state school foundation funds for impact students on a basis of Annual Number Belonging (ANB) at a rate of 1.03 ANB per projected student enrollment.

3. ANB funds are lagged one year -- based on the previous year's enrollment. The level of ANB funding has been projected on an average ANB funding rate which reflects the range of enrollment.

4. The taxable valuation generated by the mineral development and associated development has been lagged by one year. (State property tax statutes require use of the taxable valuation recorded as of January 1st of each year).

5. The year in which tax revenues are received has been lagged one year behind the taxable valuation. The first half year's taxes are due in November of the current calendar year, the second half year's taxes in May. Thus, in reality, the tax revenues are not received until the following year.

B. CONDITIONS FOR IMPACT PLAN AMENDMENT AND MONITORING

The following example is taken from the impact plan for the Stillwater Mining Company (SMC), Nye Project in Stillwater County:

14.1 Amendments

As provided in Section 90-6-311(1), MCA, the Stillwater Mining Company Impact Plan may be reviewed, and amended in whole or in part, as and where appropriate, to address the changes condition or circumstance giving rise to the revision or amendment under the following conditions:

1. For any given year, the average annual level of SMC's In-Migrating Mineral Employment is more than 15 percent greater than the level projected in this Impact Plan;

2. The average annual In-Migrating Mineral Employment residing in the Town of Columbus, or in the community of Absarokee (defined as that area served by the Absarokee sewer system), is more than 15 percent greater than the number projected in this Impact Plan;

3. The number of In-Migrating Mineral Development Students enrolled in Absarokee or Columbus elementary or high school exceeds the number projected in this Impact Plan by more than 15 percent;

4. The number of In-Migrating Mineral Development Students in Columbus or Absarokee school systems contributes, or is projected to contribute based on advance registration, more than 15 percent toward overcrowding conditions (defined as student/teacher and/or student/classroom levels above state accreditation standards) if such conditions would require the addition of teachers and/or classrooms to remedy over and above those remedies outlined in this Plan;

5. The number of In-Migrating Mineral Development Students enrolled in either the Nye or Fishtail schools exceeds 10;

6. The beginning of the mineral development construction does not occur in 1985 or 1986;

7. The taxable valuation of the SMC mineral development is more than 15 percent lower than that projected in this Impact Plan in any given year, other than Year 1;

8. Funding becomes available to Stillwater County for reconstruction of FAS 419. Under this contingency the Impact Plan would be amended to provide that SMC would pay for a percentage of the reconstruction costs of the highway and bridges in proportion to traffic volumes related to the mineral operation.

As provided for in the Hard-Rock Impact Act [Stillwater County or Stillwater Mining Company may petition the Hard-Rock Mining Impact

Board for an amendment to this Plan:]

14.2 Monitoring

STILLWATER MINING COMPANY will provide monitoring information to Stillwater County and other affected units of government as outlined in this Plan on a quarterly basis for the first three years and annually thereafter.

Such information shall include:

1. The number of mineral development employees living in each affected school district and the Town of Columbus;

2. The number of elementary and high school students of mineral development employees living in each affected school district;

3. The level of In-Migrating mineral development employment and the number living in the Town of Columbus and in the community of Absarokee;

4. The number of In-Migrating Mineral Development Students attending each affected elementary and high school;

Each affected unit of local government will be responsible for establishing monitoring procedures which would determine and quantify actual fiscal impacts resulting from the mineral development.

PROOF OF RECEIPT OF IMPACT PLAN, PUBLIC NOTICES AND PUBLIC HEARING

A. PROOF OF RECEIPT OF IMPACT PLAN

When the impact plan is formally submitted for local review, the mineral developer or an authorized representative of the county (or recipient local government unit) must provide the Board with proof of the date of submission and of the number of copies submitted. The Board will accept as proof a dated receipt, signed by the authorized representative of the county (or recipient local government unit) or an acknowledged statement by the developer.

SAMPLE:

PROOF OF RECEIPT OF IMPACT PLAN

Notice is hereby given to the Hard-Rock Mining Impact Board that on [Date], 19__, [Name of County or Local Government Unit] has received [Number of Copies] copies of the proposed [Name of Mining Project] Hard-Rock Mining Impact Plan, as submitted by [Name of Mineral Developer.]

_____
Clerk and Recorder/Recipient
_____ County, Montana

[Date] _____

B. PUBLIC NOTICE OF RECEIPT OF IMPACT PLAN

Upon receipt of the plan, the governing body of each affected county must notify the public that the impact plan has been submitted and is available for review by affected local government units and the public. The notice must be published in a newspaper of general circulation in the county. The county must submit a copy of the published notice to the Hard-Rock Mining Impact Board. The Board asks that the public notice be printed in a large, readable format.

SAMPLE:

PUBLIC NOTICE OF RECEIPT OF IMPACT PLAN

Notice is hereby given that [Name of County] has received the proposed [Name of Project] Hard-Rock Mining Impact Plan for review by affected local government units and the public. The plan was submitted by [Name of Developer] on [date], 19__. Copies are available for public review. The public may submit comments to the governing body of an affected local government unit. The local government review period ends on [date], 19__.

In providing the Board with a copy of the public notice, the county must attest to the date of its publication:

The above notice was published in the [Name of Newspaper] on [Date of Publication] .

Attested to by: _____
Clerk to the Board of Commissioners
_____ County, Montana
[Date]

C. **NOTICE OF PUBLIC HEARING**

During the 90-day review period the governing body of the county must provide public notice and hold a public hearing on the impact plan. The notice must be published in a newspaper of general circulation in the county.

SAMPLE:

NOTICE OF PUBLIC HEARING

On the ____ day of _____, 19__, the Board of Commissioners of _____ County received for review the proposed [Name of Mining Project] Hard-Rock Mining Impact Plan, as submitted by the [Mineral Developer] pursuant to the Hard-Rock Mining Impact Act, 90-6-307, MCA. The impact plan is to identify the increased need for local government services and facilities resulting from the [Name of Mining Project] and the increased capital, operating and net operating costs to affected local government units. The [Mineral Developer] is to pay to the affected counties, towns, school districts and special districts all increased local government capital and net operating costs resulting from the _____ Project, as identified in the impact plan. The plan specifies the method and schedule of payment and other commitments of the [Mineral Developer] .

In accordance with the Hard-Rock Mining Impact Act, the Board of Commissioners of _____ County will conduct a public hearing on the proposed plan at _____ o'clock on the _____ day of _____, 19__ at _____.

Interested parties may also submit written questions or comments to the _____ County Commissioners at _____, _____, Montana _____. Written comments should be received on or before _____, 19__.

The final day for governing bodies of affected local government units to submit modifications or formal objections to the proposed plan is _____, 19__.

The county must provide the Board with a copy of the notice, attesting to the date and place of its publication.

TIMETABLE FOR PREPARATION, REVIEW AND APPROVAL OF A HARD-ROCK MINING IMPACT PLAN

The preparation, review and approval of a hard-rock mining impact plan occurs separately from the developer's application for an operating permit and separately from the Department of State Land's preparation of the environmental impact statement. However, the procedures connect at certain points. The illustration below outlines the timetable for preparing, reviewing and approving an impact plan with reference to the DSL's permit and EIS procedures.

DSL'S OPERATING PERMIT AND EIS PROCESS:

Developer begins to prepare its application for an operating permit and its local government impact mitigation plan.

Developer submits its operating permit application to DSL. DSL reviews the application for completeness and may hold a pre-scoping meeting. Developer responds to DSL's completeness review. DSL prepares a Preliminary Environmental Review, if needed, and determines whether to require an Environmental Impact Statement, based on significant impacts to the human environment.

If an EIS is required, the Department holds a public scoping meeting to determine issues of public concern, prepares and distributes the draft EIS, holds a public hearing and receives written comments on the draft, and responds to the comments in the final EIS.

DSL issues an operating permit to the developer, with such conditions as may be necessitated by the project or required by law or regulation. The developer's compliance with its commitments in the approved local government impact plan is a condition of the mine's operating permit.

LOCAL GOVERNMENT IMPACT PLAN REVIEW AND APPROVAL PROCESS:

The developer prepares the local government impact mitigation plan in cooperation with affected local government units. Affected local governments often review the completed draft informally before it is submitted for formal review.

The developer may submit the proposed impact plan to the Board and to affected local governments for formal review any time after applying to DSL for an operating permit.

A. 1. 90-DAY REVIEW PERIOD: Affected local government units and the public formally review the proposed impact plan. The public addresses its concerns to the governing body of the appropriate local government unit. The governing body of the county holds a public hearing on the proposed plan.

The developer and affected local governing bodies are responsible for the substantive accuracy and adequacy of the plan and for its compliance with statutory and regulatory requirements.

The governing body of an affected local government unit may file objections to the proposed plan or, jointly with the developer, may modify the proposed plan. Only a local governing body may file an objection or may agree to a modification to the proposed impact plan on behalf of its local government unit and its constituency.

A. 2. (30-DAY REVIEW EXTENSION: The governing body of an affected local government unit may petition the Board for a 30-day extension to the review period. The extension applies only to the local government unit that requests it.)

A. 3. **If no objections are filed, the plan is automatically approved at the end of the review period, or its extension.**

B. 1. 30-DAY NEGOTIATIONS: If objections are filed, the developer and the objecting governing bodies have 30 days within which to reach an agreement on the objections.

B. 2. (EXTENDED NEGOTIATIONS: The developer and the objection governing bodies may jointly petition the Board to extend the negotiation period until such time as they specify in the petition.)

B. 3. **If the developer and affected governing bodies resolve all disputed issues within the negotiation period, or its extension, the plan is automatically approved.**

C. 1. If there are unresolved objections at the end of the negotiation period, the Hard-Rock Mining Impact Board adjudicates the remaining disputes. The Board provides notice and holds a public hearing in the most affected county. The hearing addresses only the unresolved objections.

C. 2. A hearing may last a few hours or may be continued over a period of days, depending on the number and complexity of issues to be addressed.

C. 3. Within 60 days after the hearing, the Board must issue its findings. The Board may amend the plan as appropriate to resolve the objections.

C. 4. **The Board approves the plan with amendments, if any.**

D. The developer must guarantee in writing to the Board and to the Department of State Lands its compliance with its commitments in the impact plan.

The developer must comply with the requirements of the Impact and Tax Base Sharing Acts and with its commitments in the approved impact plan as a condition of the mine operating permit.

The length of time required for the review and approval of an impact plan depends partly on statutory time constraints and partly on the decisions of the affected parties during the review procedure. As illustrated below, the timing could range from 90 days to in excess of 240 days, excluding the potential for judicial appeal.

TIME	ACTIVITY
(as needed)	PREPARE and informally review draft impact plan
90-DAYS	Submit plan to Board and local governments for formal REVIEW by local governments and public
	Hold Required Public Hearing File Modifications and Objections, if needed Request 30-day extension, if needed
(30-DAYS)	(EXTENSION OF REVIEW, if requested by local government)
30-DAYS	NEGOTIATE resolution of objections
	Notify Board of outcome of negotiations Request extension, if needed
(as requested)	(EXTENSION OF NEGOTIATIONS, as requested jointly by developer and affected local government units)
(20-30 DAYS)	Board schedules and provides NOTICE of Board hearing
(as needed)	Board holds HEARING on objections
60-DAYS	Board ISSUES FINDINGS and, if appropriate, AMENDS THE PLAN;
	Board APPROVES the plan, as amended
	Board SERVES the amended plan (or the amendments) on the affected parties
within 30 DAYS	Developer provides a WRITTEN GUARANTEE to the Board and to the Department of State Lands
(as needed)	(Potential Judicial Appeal of Board's findings)

The total time for review and approval of the impact plan will probably fall within one of the following categories:

90 DAYS	Minimum Review Period (beginning the day after the day the plan is submitted and ending on a day that is neither a holiday nor a weekend)
120 DAYS	A. Review and Review Extension, no objections B. Review, objections, successful negotiations, no extensions and no adjudication
180 DAYS	Review, objections, unsuccessful negotiations, no extensions, Board hearing and adjudication
240 DAYS or more	Review, extension, unsuccessful extended negotiations, Board hearing and adjudication

SUMMARY

The impact plan review procedure requires a minimum of 90 days after the plan is submitted. If the Board is required to adjudicate objections, the negotiation and adjudication period may extend for 120 or more days beyond the end of the review period, for a total of at least 210 days. With extensions to both the review and negotiation periods, the entire process could exceed 240 days. This would suggest that, in terms of potential time and expense, it may be worthwhile for the affected parties to resolve as many issues as possible before the developer submits the plan for formal review.

OBJECTION TO A PROPOSED HARD-ROCK MINING IMPACT PLAN

The objection to a proposed impact plan must contain the information listed below and may contain additional information.

1. Name of mineral developer, proposed mining project, and hard-rock mining impact plan.

2. Date objection is filed.

3. Local government unit(s) filing the objection.

4. Contact person for the local government unit(s):

   a. Name:
   b. Address:
   c. Phone:

5. List of local government unit(s) affected by the objection.

6. Provide specific reference, including page numbers, to the elements of the plan that are the subject of the objection.

7. Describe the substance of the objection.

8. Specify your reasons for making the objection.

9. Provide relevant data, information, or analysis in support of your objection. If you refer to portions of the plan to which you are not objecting, give page numbers.

10. Provide your recommendation and proposal for resolving the disputed issue(s).

11. Attach a **resolution dated and signed by the governing body of each objecting local government unit** confirming that the above statements appropriately reflect their views and concerns.

File 15 copies of the objection(s) with the Hard-Rock Mining Impact Board. The Board will forward copies of the objection to the mineral developer.

Hard-Rock Mining Impact Board/DOC
Room C-211, Cogswell Building
Capitol Station
Helena, Montana 59620
(406) 444-3779

File at least one copy of the objection with each affected local government unit, as identified in the proposed plan.

Refer also to 90-6-307, MCA; ARM 8.104.203 and ARM 8.104.207 through 8.104.209.

APPENDIX VIII

WRITTEN GUARANTEE OF COMPLIANCE

Sections 82-3-335, MCA and 90-6-307, MCA, require the large-scale mineral developer to submit to the Hard-Rock Mining Impact Board and to the Department of State Lands a written guarantee that the developer will comply with its commitments according to the time schedule in the approved plan.

The Act requires the developer to submit the written guarantee within 30 days of when the plan is approved. Some developers have chosen to incorporate the guarantee into the proposed plan, presumably because they do not expect the approved plan to differ signifcantly from the submitted plan. However, if the Board adjudicates objections to the plan, the developer must submit its written guarantee of compliance **after** the plan is approved.

Following is a sample written guarantee of compliance:

Date: _____

Hard-Rock Mining Impact Board
Montana Department of Commerce
Cogswell Building, Room C-211
Capitol Station
Helena, MT 59620

Dear [Chairman] and Members of the Board:

In accordance with Sections 82-4-335, MCA and 90-6-307, MCA, [Developer] hereby guarantees to the Hard-Rock Mining Impact Board and to the Department of State Lands that [the Developer] will comply with its financial and other commitments to pay all increased capital and net operating costs to affected local government units according to the schedule specified in the approved Hard-Rock Mining Impact Plan for the [Name of Mining Project].

Sincerely,

_____
[Signature of Developer]

_____
[Title]

cc. Department of State Lands, Hard-Rock Bureau

FINANCIAL GUARANTEE

A. Letter of Credit. The following sample letter of credit may be modified to fit individual impact plans. The letter of credit, with appropriate adjustments, may serve as a financial guarantee insuring that tax prepayments will be provided to pay for services and facilities when and where needed according to the impact plan.

LETTER OF CREDIT

[NAME OF BANK]
[MAILING ADDRESS]
[CITY, STATE ZIP CODE]

DATE ISSUED: _____

IRREVOCABLE DOCUMENTARY CREDIT NO._____

BENEFICIARY:
Hard-Rock Mining Impact Board
Montana Department of Commerce
Cogswell Building, Room C-211
Capitol Station
Helena, MT 59620-0524

APPLICANT:
Developer [Corporation]
on behalf of [Mining Company]
[Company Address]
[City, State Zip Code]

EXPIRES ON: [Date Impacts Are Expected To Cease]

We hereby issue in your favor our Irrevocable Standby Letter of Credit Number _____ which is available by your drafts drawn on us at sight up to an amount of $ [Total Amount Of Tax Prepayments] . Your draft must be accompanied by your signed and dated statement referring to [Bank Name] and [Letter of Credit No.] as follows:

The undersigned, a duly appointed member of the Hard-Rock Mining Impact Board, acting in his/her official capacity, hereby certifies that: [Mining Company] has failed to pay the Montana Hard-Rock Mining Impact Board the amount of [Tax Prepayment Amount Due] Dollars ($_____), lawful money of the United States for the use and benefit of the governing body of an affected local government unit, the property tax prepayments for expenditures created by the impacts of the large-scale mineral development to be constructed or located within the State of Montana by the [Mining Company] , as required by Section 90-6-309, MCA, and by the property tax prepayment schedule contained in the Hard-Rock Mining Impact Plan dated [Date of Plan] prepared by [Mining Company] and approved as of [Plan Approval Date] .

A draft from the Board may be presented and negotiated until the above sum is paid, until the Bank has obtained approval from the Board to release this letter, or until the letter terminates on [Specified Date at End of Impact Period], whichever occurs sooner, at which time this obligation will be null and void.

PARTIAL DRAWINGS ARE PERMITTED

All drafts must be marked: "drawn under [Name of Bank], [Credit No.]" (indicate the name and date of this Standby Letter of Credit) and the amount drawn will be endorsed by us.

Unless otherwise expressly stated, this Standby Letter of Credit is subject to the Uniform Customs and Practices for Commercial Documentary Credits (1983 Revision) International Chamber of Commerce Publication No. 400. We hereby engage with the drawers, endorsers and bonafide holders of the drafts drawn under and in compliance with the terms of this Standby Letter of Credit that these drafts will be duly honored by the above drawee.

[Name of Bank]

AUTHORIZED SIGNATURE

FINANCIAL GUARANTEE

B. Escrow Agreement. The following sample escrow agreement may be modified to fit individual impact plans. The escrow agreement, with appropriate modifications, may serve as the required financial guarantee insuring that tax prepayments will be provided to pay for services and facilities when and where needed according to the impact plan.

ESCROW AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, ____, between [Mineral Developer], of [Town], [State], hereinafter referred to as [Developer]; and [Financial Institution] of [Town], [State], hereafter referred to as [the Bank]; and the Montana Hard-Rock Mining Impact Board, an agency of the State of Montana, Helena, Montana, hereafter referred to as "the Board."

WITNESSETH:

WHEREAS, the Developer is developing mineral properties in _____ County, Montana, and desires to establish an escrow account with the Bank to comply with the terms and conditions of the Hard-Rock Mining Impact Act, Sections 90-6-301, et seq., MCA;

WHEREAS, the Bank agrees to the establishment of the escrow account and to the holding and disbursement of such funds in accordance with the terms of this agreement; and

WHEREAS, the Board has accepted this escrow agreement in satisfaction of the requirement of Section 90-6-309(3), MCA, that a large-scale mineral developer guarantee that property tax prepayments called for by an approved hard-rock mining impact plan, including any approved amendment to the impact plan, will be paid as needed for expenditures created by the impacts of the mineral development.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Establishment of Account. The Developer will deposit in an escrow account with the Bank the sum of [Amount of Tax Prepayment] ($_____), as the initial deposit of impact funds. The fund balance will be reviewed on a quarterly basis, or more frequently if necessary, and the Developer will replenish the fund as required to meet its commitments under the Impact Act. The escrow account will hold funds pledged as tax prepayments [and other commitments for donations and grants].

2. Duration of the Escrow Account. The initial funds will be deposited by the Developer in the escrow account within _____ business days of the date the Developer receives its operating permit from the Montana Department of State Lands. The parties estimate that the initial funding date will be approximately _____, 19__. The escrow account will continue to exist until the impact period terminates or until the Developer's tax prepayment

commitments specified in the impact plan have been met, whichever is later, as certified by the Board. Before the end of the impact period and before approving the termination of the escrow account, the Board will notify Developer and the affected jurisdictions that the account is to be terminated and that within ____ days the affected jurisdictions must notify the Board of any pending claims or anticipated requests for tax prepayments from that account or forfeit the right to receive payment from the account.

3. Fees Paid to the Bank. The Developer agrees to pay the Bank the sum of $_____ as an initial setup charge for the escrow account, and the sum of $_____ for each disbursement made from the escrow account. The Bank will bill the Developer for its services and the Developer will pay the Bank within _____ days of the date of invoice.

4. Interest Bearing Account. The escrow account will bear interest and all interest earned thereby will be the property of the Developer and may be withdrawn by the Developer at any time. Otherwise, the Bank will not withhold monies or make payments from the account except as authorized herein for payments to the affected jurisdictions identified in paragraph 5 below made in accordance with the impact plan or as directed by the Board in resolution of disputes, or to the Developer as directed by the Board at such time as the Board determines that the Developer is released from further obligations under this agreement.

5. Affected Jurisdictions. The following governmental and public agencies are eligible to receive tax prepayments or potential prepayments from this account in accordance with the impact plan: [List here the local government units listed in the impact plan. Example below.]

(a) _____ County
(b) _____ Town
(c) _____ High School District #__
(d) _____ Elementary School District #___
(e) _____ Elementary School District #___

6. Maximum Allowable Payments. Each of the affected jurisdictions above is entitled to receive impact assistance payments up to the maximum amount shown below:

[specific to individual impact plan]

7. Procedures of Distribution of Impact Plan Payment. The following procedures will be followed by the parties for the application and distribution of payments from the escrow account:

(a) The affected jurisdiction will submit a written request to the Developer with a copy to the Bank and the Board, providing the information specified on the "Request for Payment" form appended to this escrow agreement as Attachment A.

(b) For each request for an impact payment for which a maximum amount is specified above, the Bank shall make disbursements directly to the County Treasurer, _____ County Courthouse, _____, Montana ___zip code___, to be deposited in the impact fund of the

affected jurisdiction. These payments will be made no sooner than ____ days but within _____ days of the Bank's receipt of the funding request, except as provided below.

(c) Within ____ days of its receipt of a fund request, the Developer may object in writing to the Bank, the Board and the affected jurisdiction, questioning all or a portion of the request. If an objection is made, the Bank will not disburse that portion of the requested payment to which an objection has been made until the Bank has been notified in writing by the Board that the dispute has been resolved by the parties or that a final decision has been made by the Board. The Bank will make payment in resolution of the dispute as is directed by the Board.

(d) In the event that an affected jurisdiction submits a request for payment for a purpose or an amount that appears not to be authorized by the impact plan, the Developer or the Board may object in writing to all affected parties within ____ days of receipt of notice of the payment request. Upon receipt of such an objection, the Bank will withhold the requested payment until it is notified in writing by the Board that the dispute has been resolved by the parties or that a final decision has been made by the Board. The Board will authorize only such impact payments as are specified in or provided for by the impact plan, or an approved amendment to the impact plan.

(e) When any payment is made by the Bank to an affected jurisdiction, the Bank will notify the Developer and the Board of the payment, providing the information specified on the "Payment" form appended to this escrow agreement as Attachment B.

8. Notices. Any notices required to be given pursuant to the terms of this agreement will be delivered personally or mailed by first class mail, postage prepaid, to the parties at the following addresses:

(a) Developer, _____[Name and Address]_____.
(b) Bank Representative, _____[Name and Address]_____.
(c) Board: [Name], Administrative Officer, Hard-Rock Mining Impact Board, Montana Department of Commerce, State Capitol, Helena, Montana 59620-0524.

9. The Bank's Duties. In performing its duties under this escrow agreement, the Bank's liabilities and responsibilities will be limited and defined as follows:

(a) The Bank need not inquire into the authorization, execution, genuineness, accuracy, validity, legality or binding effect of any notices delivered to it pursuant to this escrow agreement, so long as such document appears on its face to meet any requirements set forth in this escrow agreement, and purports to be signed by a proper person identified in the appended list of authorized signatures.

(b) The Bank may employ attorneys for the reasonable protection of this escrow agreement and itself. Should the Bank be made a defendant in

any suit by any party to this escrow agreement, or any other party, the cost of such suit, including attorney's fees, may be received from the Developer.

10. Amendment or Termination. This agreement may be amended or terminated only upon the written consent of the three parties hereto and as provided in paragraph 2. The Developer hereby acknowledges that if, for any reason, this agreement fails to guarantee adequately the tax prepayments required of the Developer under the impact plan or its approved amendment, the Developer remains responsible for making these payments under Section 90-6-307, MCA.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

DEVELOPER

By: _____
Title: _____

BANK

By: _____
Title: _____

HARD-ROCK MINING IMPACT BOARD

By: _____
Board Chairman

RUN DATE - 07/01/87
BY FUND

STILLWATER COUNTY
STATEMENT OF EXPENDITURES VS APPROPRIATIONS
FOR THE MONTH ENDING 06/30/87

NOMINAL YEAR TO DATE VARIANCE 100%

ACCOUNT	MONTH BUDGETED	MONTH EXPENDED	MONTH %	YEAR TO DATE BUDGETED	YEAR TO DATE EXPENDED	YEAR TO DATE ENCUMBERED	YEAR TO DATE %	YEAR TO DATE REMAINING
2275-HARD ROCK MINING-COUNTY								
241-MINING IMPACT DEPARTMENT								
410110-COMM. ADMINISTRATION								
111-WAGES & SALARIES - PERM	0	0	0	0	0	0	0	0
112-WAGES & SALARIES - TEMP	510	475	93	6,120	4,641	0	76	1,479
141-UNEMPLOYMENT INSURANCE	6	3	44	50	26	0	52	24
142-WORKER'S COMPENSATION	9	1	16	42	12	0	29	30
143-HEALTH INSURANCE	75	64	86	812	667	0	82	145
144-FICA	54	34	63	538	332	0	62	206
145-P.E.R.S.	0	0	0	0	0	0	0	0
146-P.E.R.S. 2	42	30	73	482	298	0	62	184
311-POSTAGE & BOX RENT	0	0	0	0	0	0	0	0
320-PRINT,DUP,TYPING,BINDING	0	0	0	0	0	0	0	0
345-TELEPHONE	0	0	0	0	0	0	0	0
350-PROFESSIONAL SERVICES	1,440	4,200	292	17,214	9,200	0	53	8,014
370-TRAVEL	73	0	0	766	134	0	17	632
TOTAL COMM. ADMINISTRATION	2,209	4,808	218	26,024	15,309	0	59	10,715
410331-DISTRICT COURT ADMIN.								
112-WAGES & SALARIES - TEMP	110	0	0	1,276	819	0	64	457
141-UNEMPLOYMENT INSURANCE	10	0	0	10	5	0	45	6
142-WORKER'S COMPENSATION	9	0	0	9	3	0	28	6
144-FICA	9	0	0	108	59	0	54	49
145-P.E.R.S.	0	0	0	0	0	0	0	0
146-P.E.R.S. 2	9	0	0	97	53	0	54	44
210-OFFICE SUPPLIES,MATERIALS	42	0	0	405	378	0	93	28
213-MICROFILM & DUP. SUPPLIES	0	0	0	0	0	0	0	0
345-TELEPHONE	49	0	0	500	0	0	0	500
920-FURNITURE & FIXTURES	87	495	569	1,000	847	0	85	153
TOTAL DISTRICT COURT ADMIN.	325	495	152	3,405	2,162	0	63	1,243
410340-JUSTICE COURT								
111-WAGES & SALARIES - PERM	0	0	0	0	0	0	0	0
112-WAGES & SALARIES - TEMP	31	0	0	339	0	0	0	339
141-UNEMPLOYMENT INSURANCE	3	0	0	3	0	0	0	3
142-WORKER'S COMPENSATION	3	0	0	3	0	0	0	3
143-HEALTH INSURANCE	0	0	0	0	0	0	0	0
144-FICA	7	0	0	29	0	0	0	29
145-P.E.R.S.	4	0	0	26	0	0	0	26
146-P.E.R.S. 2	0	0	0	0	0	0	0	0
920-FURNITURE & FIXTURES	13	0	0	156	158	0	101	2-
TOTAL JUSTICE COURT	61	0	0	556	158	0	28	398
411010-PLANNING ADMINISTRATION								
111-WAGES & SALARIES - PERM	0	0	0	0	0	0	0	0
112-WAGES & SALARIES - TEMP	770	748	97	9,152	8,395	0	92	757

ACCOUNT	MONTH BUDGETED	MONTH EXPENDED	MONTH %	YEAR TO DATE BUDGETED	YEAR TO DATE EXPENDED	YEAR TO DATE ENCUMBERED	YEAR TO DATE %	YEAR TO DATE REMAINING
141-UNEMPLOYMENT INSURANCE	15	4	27	92	46	0	50	46
142-WORKER'S COMPENSATION	13	4	29	90	47	0	52	43
143-HEALTH INSURANCE	0	0	0	0	0	0	0	0
144-FICA	61	53	88	655	600	0	92	55
145-P.E.R.S.	0	0	0	0	0	0	0	0
146-P.E.R.S. 2	49	48	98	588	539	0	92	49
210-OFFICE SUPPLIES,MATERIALS	24	73	304	200	178	0	89	22
311-POSTAGE & BOX RENT	6	22	367	50	44	0	88	6
320 PRINT,DUP,TYPING,BINDING	30	0	0	250	0	0	0	250
345-TELEPHONE	39	9	24	347	223	0	64	124
350-PROFESSIONAL SERVICES	1,250	2,794	224	15,000	7,684	0	51	7,317
370-TRAVEL	74	26	35	800	703	0	88	97
920-FURNITURE & FIXTURES	22	224	999	242	224	0	93	18
TOTAL PLANNING ADMINISTRATION	2,353	4,005	170	27,466	18,681	0	68	8,785
411100-LEGAL SERVICES								
112-WAGES & SALARIES - TEMP	0	0	0	0	0	0	0	0
141-UNEMPLOYMENT INSURANCE	0	0	0	0	0	0	0	0
142-WORKER'S COMPENSATION	0	0	0	0	0	0	0	0
144-FICA	0	0	0	0	0	0	0	0
920-FURNITURE & FIXTURES	155	1,575	999	1,750	1,750	0	100	0
TOTAL LEGAL SERVICES	155	1,575	999	1,750	1,750	0	100	0
420100-LAW ENFORCEMENT SERVICES								
111-WAGES & SALARIES - PERM	1,415	1,410	100	16,925	13,812	0	82	3,113
130-EMPLOYEE BENEFITS	120	0	0	1,440	1,280	0	89	160
141-UNEMPLOYMENT INSURANCE	12	8	65	111	77	0	70	34
142-WORKER'S COMPENSATION	28	29	103	314	281	0	89	33
143-HEALTH INSURANCE	139	129	93	1,624	1,333	0	82	291
144 FICA	111	101	91	1,211	988	0	82	223
145-P.E.R.S.	0	0	0	0	0	0	0	0
146-P.E.R.S. 2	111	108	97	1,299	1,059	0	82	240
220-OPERATING SUPPLIES	87	632	727	1,000	1,846	0	185	846-
226-CLOTHING & UNIFORMS	174	0	0	2,000	1,211	0	61	789
231-FUEL OIL	87	0	0	1,000	0	0	0	1,000
370-TRAVEL	130	0	0	1,538	395	0	26	1,143
380-TRAINING SERVICES	130	0	0	1,538	627	0	41	911
392-BOARDING PRISONERS	41	0	0	426	0	0	0	426
940-MACHINERY & EQUIPMENT	837	0	0	10,000	13,446	0	134	3,446-
TOTAL LAW ENFORCEMENT SERVICES	3,422	2,417	71	40,426	36,355	0	90	4,071
430200-ROAD & STREET SERVICES								
111-WAGES & SALARIES - PERM	1,708	1,236	72	20,375	15,388	0	76	4,987
141-UNEMPLOYMENT INSURANCE	18	7	38	205	85	0	41	120
142-WORKER'S COMPENSATION	83	54	65	886	661	0	75	225
143-HEALTH INSURANCE	126	129	102	1,435	1,535	0	107	100-

APPENDIX X - 2

RUN DATE - 07/01/87
BY FUND

STILLWATER COUNTY
STATEMENT OF EXPENDITURES VS APPROPRIATIONS
FOR THE MONTH ENDING 06/30/87

NOMINAL YEAR TO DATE VARIANCE 100%

ACCOUNT	MONTH BUDGETED	MONTH EXPENDED	MONTH %	YEAR TO DATE BUDGETED	YEAR TO DATE EXPENDED	YEAR TO DATE ENCUMBERED	YEAR TO DATE %	YEAR TO DATE REMAINING
144-FICA	126	88	70	1,457	1,100	0	76	357
145-P.E.R.S.	108	0	0	1,230	0	0	0	1,230
146-P.E.R.S. 2	109	79	73	1,308	987	0	75	321
230-REPAIRS AND MTNC. SUPPLY	16	0	0	71	6,789	0	999	6,718-
930-IMPROVEMENTS	0	0	0	0	0	0	0	0
940-MACHINERY & EQUIPMENT	1,801	0	0	21,491	21,657	0	101	166-
TOTAL ROAD & STREET SERVICES	4,095	1,593	39	48,458	48,203	0	99	255
431500-BRIDGE SERVICES								
230-REPAIRS AND MTNC. SUPPLY	534	0	0	6,353	5,702	0	90	651
TOTAL BRIDGE SERVICES	534	0	0	6,353	5,702	0	90	651
440110-SANITARIAN ADMINISTRATION								
111-WAGES & SALARIES - PERM	0	0	0	0	138	0	0	138-
112-WAGES & SALARIES - TEMP	510	0	0	6,120	166	0	3	5,954
141-UNEMPLOYMENT INSURANCE	6	0	0	50	2	0	4	48
142-WORKER'S COMPENSATION	9	0	0	42	1	0	2	41
143-HEALTH INSURANCE	26	0	0	268	0	0	0	268
144-FICA	54	0	0	538	22	0	4	516
145-P.E.R.S.	0	0	0	0	0	0	0	0
146-P.E.R.S. 2	42	0	0	482	19	0	4	463
350-PROFESSIONAL SERVICES	625	50	8	7,500	4,530	0	60	2,970
TOTAL SANITARIAN ADMINISTRATION	1,272	50	4	15,000	4,878	0	33	10,122
440120-MENTAL HEALTH FACILITY								
397-CONTRACT PAYMENTS	50	0	0	600	600	0	100	0
TOTAL MENTAL HEALTH FACILITY	50	0	0	600	600	0	100	0
440540-ALCOHOL ABUSE								
397-CONTRACT PAYMENTS	68	0	0	750	750	0	100	0
TOTAL ALCOHOL ABUSE	68	0	0	750	750	0	100	0
450110-POOR FUND ADMINISTRATION								
111-WAGES & SALARIES - PERM	510	214	42	6,120	2,751	0	45	3,369
141-UNEMPLOYMENT INSURANCE	6	0	0	50	0	0	0	50
142-WORKER'S COMPENSATION	9	0	0	42	0	0	0	42
143-HEALTH INSURANCE	26	0	0	268	0	0	0	268
144-FICA	54	0	0	538	0	0	0	538
145-P.E.R.S.	0	0	0	0	0	0	0	0
146-P.E.R.S. 2	42	0	0	482	0	0	0	482
TOTAL POOR FUND ADMINISTRATION	647	214	33	7,500	2,751	0	37	4,749

STILLWATER COUNTY
STATEMENT OF EXPENDITURES VS APPROPRIATIONS
FOR THE MONTH ENDING 06/30/87

NOMINAL YEAR TO DATE VARIANCE 100%

ACCOUNT	MONTH BUDGETED	MONTH EXPENDED	MONTH %	YEAR TO DATE BUDGETED	YEAR TO DATE EXPENDED	YEAR TO DATE ENCUMBERED	YEAR TO DATE %	YEAR TO DATE REMAINING
450131-GENERAL ASSISTANCE-POOR								
712-DRUGS & MEDICINE	49	0	0	500	0	0	0	500
713-UTILITIES	49	0	0	500	0	0	0	500
714-RENT	49	0	0	500	0	0	0	500
TOTAL GENERAL ASSISTANCE-POOR	147	0	0	1,500	0	0	0	1,500
450137-FOSTER CARE								
795 GENERAL	143	0	0	1,650	2,601	0	158	951-
TOTAL FOSTER CARE	143	0	0	1,650	2,601	0	158	951-
460110-LIBRARY ADMINISTRATION								
920-FURNITURE & FIXTURES	106	0	0	1,250	1,250	0	100	0
TOTAL LIBRARY ADMINISTRATION	106	0	0	1,250	1,250	0	100	0
TOTAL MINING IMPACT DEPARTMENT	15,587	15,157	97	182,688	141,149	0	77	41,539
TOTAL HARD ROCK MINING-COUNTY	15,587	15,157	97	182,688	141,149	0	77	41,539

RUN DATE - 07/01/87
BY FUND

STILLWATER COUNTY
STATEMENT OF EXPENDITURES VS APPROPRIATIONS
FOR THE MONTH ENDING 06/30/87

NOMINAL YEAR TO DATE VARIANCE 100%

ACCOUNT	MONTH BUDGETED	MONTH EXPENDED	MONTH %	YEAR TO DATE BUDGETED	YEAR TO DATE EXPENDED	YEAR TO DATE ENCUMBERED	YEAR TO DATE %	YEAR TO DATE REMAINING
2276-HARD ROCK MINING RSID 5-7								
241-MININD IMPACT DEPARTMENT								
430600-SEWER UTILITIES								
112-WAGES & SALARIES - TEMP	770	0	0	9,152	198	0	2	8,954
141-UNEMPLOYMENT INSURANCE	15	0	0	92	1	0	1	91
142-WORKER'S COMPENSATION	35	0	0	398	1	0	0	397
144-FICA	61	0	0	655	14	0	2	641
146-P.E.R.S. 2	49	0	0	588	13	0	2	575
210-OFFICE SUPPLIES,MATERIALS	24	0	0	200	0	0	0	200
311-POSTAGE & BOX RENT	6	0	0	50	0	0	0	50
320-PRINT,DUP,TYPING,BINDING	31	0	0	350	0	0	0	350
345-TELEPHONE	24	0	0	200	0	0	0	200
350-PROFESSIONAL SERVICES	250	0	0	3,000	3,348	0	112	348-
370-TRAVEL	101	0	0	1,135	8	0	1	1,127
397-CONTRACT PAYMENTS	4,500	0	0	54,000	41,744	0	77	12,256
940-MACHINERY & EQUIPMENT	6,522	0	0	78,264	25,178	0	32	53,087
TOTAL SEWER UTILITIES	12,388	0	0	148,084	70,504	0	48	77,580
TOTAL MININD IMPACT DEPARTMENT	12,388	0	0	148,084	70,504	0	48	77,580
TOTAL HARD ROCK MININD RSID 5-7	12,388	0	0	148,084	70,504	0	48	77,580

RUN DATE - 07/01/87
BY FUND

STILLWATER COUNTY
STATEMENT OF EXPENDITURES VS APPROPRIATIONS
FOR THE MONTH ENDING 06/30/87

NOMINAL YEAR TO DATE VARIANCE 100%

ACCOUNT	MONTH BUDGETED	MONTH EXPENDED	MONTH %	YEAR TO DATE BUDGETED	YEAR TO DATE EXPENDED	YEAR TO DATE ENCUMBERED	YEAR TO DATE %	YEAR TO DATE REMAINING
2277-HARD ROCK MINING SOLID W.								
241 MINING IMPACT DEPARTMENT								
430800-SOLID WASTE SERVICES								
112-WAGES & SALARIES - TEMP	0	0	0	0	0	0	0	0
141-UNEMPLOYMENT INSURANCE	0	0	0	0	0	0	0	0
142-WORKER'S COMPENSATION	0	0	0	0	0	0	0	0
144-FICA	0	0	0	0	0	0	0	0
146-P.E.R.S. 2	0	0	0	0	0	0	0	0
940-MACHINERY & EQUIPMENT	91	0	0	1,026	1,026	0	100	0
TOTAL SOLID WASTE SERVICES	91	0	0	1,026	1,026	0	100	0
TOTAL MINING IMPACT DEPARTMENT	91	0	0	1,026	1,026	0	100	0
TOTAL HARD ROCK MINING SOLID W.	91	0	0	1,026	1,026	0	100	0

APPENDIX XI

IMPACT PLAN PAYMENTS

A. REQUEST FOR PAYMENT

Local government: Please provide the following information when requesting a payment in compliance with an approved impact plan.

1. Date: _____ 2. Name of local government unit requesting the payment: _____

3. Name of mineral developer: _____

4. Amount requested: $_____ 6. Amount authorized by plan $_____

5. Type of payment: a) grant: _____ b) tax prepayment: _____ c) other _____ (explain) cite page number or payment number or both: _____

6. Purpose of payment (as specified in the approved impact plan): _____

7. Send to the Board a copy of (a) the **impact fund budget** and (b) the **signed resolution** by which the governing body adopted the impact budget or budget amendment. Enclosed: _____ Under separate cover: _____ Sent previously: _____

8. Impact Fund Account No.: _____

9. Signature of the governing body or its authorized signatory:

_____ _____

_____ _____

B. PAYMENT

Developer: Please provide the following information when making a payment in compliance with an approved impact plan.

1. Date request was received: _____ 2. Date payment was made: _____

3. Amount of payment $_____

4. Signature(s) of designated representative(s) of the developer:

_____ _____

C. RECEIPT OF PAYMENT

County Treasurer: Please provide the following information upon receipt of a payment in compliance with an approved impact plan.

1. Date payment received: _____ 2. Amount of payment: $_____

3. Signature of county treasurer or other designated representative:

_____ _____

When the payment is received, a copy of the information requested herein must be sent to the Hard-Rock Mining Impact Board, Department of Commerce, Capitol Station, Helena, Montana 59620-0524

APPENDIX XII

TAX PREPAYMENT AND TAX CREDITING

INTRODUCTION

The Hard-Rock Mining Impact Act authorizes the developer of a new large-scale hard-rock mine to prepay property taxes to meet increased local government costs resulting from the mineral development. As provided in the impact plan, the developer prepays taxes when revenue resulting from the mineral development is less than the increased costs.

In future years the local government unit must credit the prepaid taxes back to the developer. Tax credits are calculated by individual fund. Tax credits occur when the taxable valuation of the mineral development has increased sufficiently to enable the local government unit to meet increased costs resulting from the development without raising the mill levy for the affected fund. The Act constrains the provision of tax credits to prevent increased costs from being shifted over time to the non-developer local taxpayer.

Tax prepayment and tax crediting apply only to the taxable property of the mineral developer. Unlike tax base sharing, tax prepayment and crediting do not affect contractors and subcontractors at the mine site.

Unless otherwise amended, impact plans submitted prior to July 1, 1985 are subject to the requirements of the Impact Act as amended in 1983. Plans submitted on or after July 1, 1985 are subject to the Act as amended in 1985.

Other variables, including legislative actions that affect local property taxation, mill levy limits and budgeting, may also affect the prepayment and crediting of taxes under an impact plan.

Tax prepayment and crediting are discussed in Chapter III of the Guide, pages 8-11.

STATUTORY REFERENCE: 90-6-309, MCA.

The current tax prepayment and crediting statute, section 90-6-309, MCA, appears below, followed by the 1983 version of subsection (5). "Board" refers to the Hard-Rock Mining Impact Board. The 1983 version applies to plans submitted prior to July 1, 1985.

> 90-6-309. **Tax prepayment -- large-scale mineral development.** (1) After permission to commence operation is granted by the appropriate governmental agency, and upon request of the governing body of a county in which a facility is to be located, a person intending to construct or locate a large-scale mineral development in this state shall prepay property taxes as specified in the impact plan. This prepayment shall exclude the 6-mill university levy and may exclude the mandatory county levy for the school foundation program of 45 mills.

(2) The person who is to prepay under this section shall not be obligated to prepay the entire amount established in subsection (1) at one time. Upon request of the governing body of an affected local government unit, the person shall prepay the amount shown to be needed from time to time as determined by the board.

(3) The person who is to prepay shall guarantee to the hard-rock mining impact board, through an appropriate financial institution, as may be required by the board, that property tax prepayments will be paid as needed for expenditures created by the impacts of the large-scale mineral development.

(4) When the mineral development facilities are completed and assessed by the department of revenue, they shall be subject during the first 3 years and thereafter to taxation as all other property similarly situated, except that in each year after the start of production, the local government unit that received a property tax prepayment shall provide for repayment of prepaid property taxes in accordance with subsection (5).

(5) A local government unit that received all or a portion of the property tax prepayment under this section shall provide for tax crediting as specified in the impact plan. The tax credit allowed in any year may not, however, exceed the tax obligation of the developer for that year, and the time period for tax crediting is limited to the productive life of the mining operation.

History: Enc. Sec. 10, Ch. 617, L. 1981; amd. Sec. 4, Ch. 489, L. 1983; amd. Sec. 6, Ch. 582, L. 1985.

Prior to July 1, 1985, subsection 90-6-309(5), MCA read as follows:

(5) A local government that received all or a portion of the property tax prepayment under this subsection shall provide for repayment according to the following procedure:

(a) In each year after the commencement of mining, the local government shall:

(i) divide its budget by the average mill levy of its jurisdiction during the 3 years immediately preceding commencement of mining operations, to arrive at a taxable valuation needed to fund its budget using the average 3-year mill levy;

(ii) reduce the taxable valuation of property of a person who prepaid property taxes by the excess, if any, of the total taxable value of the taxing jurisdiction including the person's property over the taxable value

determined under subsection (5)(a)(i), but in no case by

an amount greater than the taxable value of the person's property.

(b) The reduction in taxable value, if any, determined under subsection (5)(a)(ii) times the average mill levy used in subsection (5)(a)(i) equals the property tax prepayment credit allowed for the taxable year for that local government unit. Any local government unit not receiving a payment shall not be affected by this section, and no reduction in value shall be used in the computation of taxes due that unit of local government. In no event shall the credit allowed under this part extend more than 10 years beyond the date the prepayment is made under this section.

(c) The procedure established under subsection (5)(b) shall continue from year to year until the total credit allowed the person who prepaid property taxes equals the total property taxes prepaid.

KEY EVENTS DEFINED

In section 90-6-309, MCA, the Hard-Rock Mining Impact Act refers to certain events that occur during the development of a mine: "start of production," "commencement of mining," and "commencement of mining operations." Plans submitted after June, 1985, should define these terms. The developer must notify the Board and the affected local government units within 30 days of when each event occurs. If a plan does not otherwise define these terms, the following definitions will apply:

1. 90-6-309(4), MCA: "start of production"
   90-6-309(5), MCA: "commencement of mining" (prior to 7/1/85)

   For purposes of 90-6-309, MCA, "start of production" and "commencement of mining" both refer to the date on which the first ore is removed from the mine and transported to the mill for processing.

   The local government unit begins calculating tax credits in the calendar year following the year when the mine starts production. The sequence of events is:

   A. Calendar Year I -- The mine starts production.

   B. Calendar Year II -- In January the Department of Revenue assesses the mining property.

   C. Calendar Year II (late spring and summer) -- The local governing body prepares its budget for the new fiscal year and calculates how much, if any, tax credit will be due.

   The local government fiscal year begins on July 1. The fiscal year for which the budget is being prepared encompasses the second half of Calendar Year II and the first half of Calendar Year III. Mill levies are to be set by mid-August. Property tax payments for that fiscal

year are due in November of Calendar Year II and in May of Calendar Year III.

2. 90-6-309(5), MCA: "commencement of mining operations"

For purposes of 90-6-309(5), MCA, "commencement of mining operations" refers to the date on which the developer initiates the first on-site disturbance related to the development and construction of the mine or associated milling facility under an operating permit issued by the Department of State Lands.

The local government unit calculates its average mill levy for the three fiscal years preceding the fiscal year in which "commencement of mining operations" occurs. The relevant three years are calculated as follows:

The local government fiscal year during which the developer commences mining operations under the permit is the Base Year. (Again, the local government fiscal year begins on July 1.)

The fiscal year preceding the Base Year is Year 1.

If "commencement of mining operations" occurs July 1, 1987 and June 30, 1988, FY 88 is the Base Year, FY 87 is Year 1, FY 86 is Year 2 and FY 85 is Year 3 preceding the Base Year. Add the mill levies for the appropriate fund for FY 87, FY 86 and FY 85. Divide the total by 3. The resulting amount is the average or base mill levy for that fund for purposes of calculating tax credits under 90-6-309, MCA.

TAX PREPAYMENTS AND TAX CREDITS

After the Department of State Lands has issued the mine's operating permit, the governing body of the county initiates the prepayment of taxes by requesting the developer to prepay taxes as specified in the approved impact plan. Then, the governing body of each affected local government unit requests its individual prepayments, as provided by the plan. The developer sends tax prepayments either to the county treasurer or via the Board, whichever the plan requires.

The county treasurer credits each tax prepayment to the impact fund of the appropriate local government unit, to be used as specified in the impact plan. The impact fund consists of line items that correspond to expenditure categories for similar services that are provided through the regular funds of the local government unit (general fund, road fund, bridge fund, library fund....) In accounting terms, a tax prepayment is treated as a deficit in the corresponding fund, because, subject to certain conditions, the prepayment constitutes a debt which must be repaid.

Beginning the year after the mine starts production, as part of the annual budget process, the governing body of each local government unit that has received a tax prepayment must calculate the tax credit due from the corresponding fund.

Under the 1983 Act, the local governing body was required to calculate tax credits according to a statutory formula. Calculations had to be made until the prepayment was credited in full or up to ten years after the tax was prepaid. Taxes were credited by reducing the mineral developer's taxable valuation, as calculated by local government unit and by fund. The dollar value of the credit was equal to the reduction in valuation times the average mill levy for the affected fund for the three years prior to the commencement of mining.

The 1983 statutory procedure, strictly interpreted, was found to be self-contradictory and somewhat cumbersome and confusing in practice, particularly when coupled with the requirements of the 1983 Property Tax Base Sharing Act. The multiple revision of taxable valuation for each affected local government unit and fund imposed a time-consuming burden on local government officials to achieve a goal that might be accomplished more readily in other ways. Providing a dollar-for-dollar tax credit is less complicated for both the local government unit and the developer than reducing taxable valuations.

In addition, it was found that under certain circumstances the formula itself could lead to situations incompatible with other statutory and budgetary requirements. In one case, for example, a strict application of the formula-based procedure indicated that a tax credit should be given while the developer was still prepaying taxes to meet net operating costs. In this situation, the provision of a tax credit would have created an additional, unpaid net operating cost, contrary to the statutory requirement that the developer, through the plan, must identify and pay all increased net operating costs resulting from the development.

This anomaly could occur for any of several reasons. The statutory formula did not anticipate the accounting necessity for maintaining the integrity of individual funds. Further, it did not allow for changes in county classification or for statutory mill levy limits that are less than the historic three year average. The rigidity of the original formula and the inherent potential for conflict with other statutes and regulations led to the 1985 amendments.

In 1985 the Legislature deleted the tax crediting formula and eliminated the authority to reduce taxable valuation as a means of achieving tax credits. Instead, the amended Act requires the impact plan to specify how dollar-for-dollar tax crediting will be accomplished. The developer remains entitled to receive tax credits throughout the productive life of the mine, rather than for just ten years. In any given year the tax credit must not exceed the developer's tax obligation.

The 1985 amendment enables the parties to a plan to establish their own procedure or to modify the 1983 formula for calculating tax credits, as long as tax crediting is consistent with other budgeting, accounting and statutory requirements. The amendment does not affect the purposes of the Impact Act nor change the principles underlying the provision of tax prepayments and tax credits.

To ensure consistency with the purposes of the Impact Act, the following criteria may be applied to tax prepayment and tax crediting, recognizing that special circumstances may warrant exceptions:

(1) Mill levies, the three year average mill levy and tax credits must be calculated separately for each fund within the local government unit's budget.

(2) If costs resulting from the mineral development will exceed revenues from the development, a tax **prepayment** may be due;

(3) If property tax revenue from the mineral developer would exceed increased costs resulting from the mineral development, using a mill levy equal to or less than the three year average, a tax **credit** may be due.

(4) A tax credit must not cause the revenues resulting from a mineral development to be less than the increased costs resulting from the development. If a tax prepayment is to be made to the impact fund, no tax credit should be given from the corresponding fund during the same fiscal year.

(5) A tax credit should be given from the current year's property tax revenue. A credit should not be made from non-tax revenue or from revenue received in prior fiscal years (i.e. reserve funds.)

(6) A tax credit should not have the effect of reducing the needed level of service.

(7) In any given fiscal year the tax credit must not exceed the developer's tax obligation.

(8) In calculating and providing tax credits, the local governing body must not exceed the maximum legally authorized mill levy limit.

As noted, the 1983 Impact Act requires local governments to use a three-year average mill levy as a basis for determining the taxable valuation necessary to finance the budget and for calculating the dollar value of the tax credit. Although no longer required, the three-year average mill levy may continue to provide a useful base mill levy, with adjustments when appropriate. Unusual circumstances may result in an atypical mill levy. Changes in county classification may result in a statutory mill levy limit that is less than the three year average. Other legislative action may impose additional constraints on the budget or the mill levy.

CALCULATING TAX CREDITS

Two sample tax crediting procedures are attached. For tax crediting purposes, "budget" refers to that portion of each fund's total budget which is financed through property taxes. Typically, this means the total budget less reserves, non-tax revenues and intergovernmental transfers.

Stillwater County was the first local government unit to attempt tax crediting, using the 1983 statutory formula. The County developed a tax crediting procedure that integrates well with the normal county assessment, budgeting and taxation processes. A modified version of their procedure is outlined below. What it does not show are the calculations the governing body made to ensure that the increased costs resulting from the development would be covered by the budget and mill levy after the tax credit.

The second sample procedure also appears to be consistent with the purpose and requirements of the Act and compatible with local government budgeting and accounting requirements. In any calculation of tax credits, the governing body needs to take into account increased costs, constraints imposed by the plan, and other statutory or regulatory requirements. The calculation of tax credits may be influenced by a number of variables. No procedure constitutes a universally applicable formula. Like the rest of the impact plan, tax crediting must be considered on a case by case basis and is susceptible to change if circumstances -- including legislation -- change.

In conjunction with the calculation and provision of tax credits, note the following annual schedule of assessments and tax notices:

January of each year: Department of Revenue assesses mining property.

By July 1st of each year: County Assessor sends assessment notices to all property owners.

By the second Monday in July each year: County Assessor sets the taxable valuation.

By the first Monday after the first Wednesday in August each year, the governing body sets the final budget. As soon as possible after setting the budget, and no later than September first, the governing body notifies the County Assessor how much tax credit (or reduction in taxable valuation) is to be given by fund.

In October each year (unless delayed): the County Treasurer sends out individual tax statements.

ATTACHMENT A

SAMPLE TAX CREDITING PROCEDURE

(Modified from Stillwater County's approach using the 1983 formula.)

Each year following the year in which the mine starts production, the governing body of each local government unit that received prepaid taxes from the mineral developer must calculate how much, if any, tax credit is due in that fiscal year.

The following sample procedure for calculating tax credits parallels a county's normal budgeting process and uses the three year average mill levy as the basis for its calculations. This procedure assumes the governing body understands how to apply the constraints associated with prepayment and tax crediting.

All impact payments are made into the impact fund. Each payment is for a service that would otherwise be paid for from a corresponding fund in the regular budget: general fund, library fund, road fund, and so forth. The three year average mill levy and tax credits are calculated on a fund by fund basis.

In any given fiscal year, no tax credit is due from a fund that provides a service for which a net operating cost exists and no tax credit is provided that would create a net operating cost.

Following is a procedure for calculating and providing tax credits in a manner consistent with the 1983 Impact Act. Refer to the accompanying tax crediting chart, Attachment A-1.

A. Calculate the three year average mill levy separately for each fund that corresponds to a service for which a tax prepayment was made.

   List the affected County Funds:

   General Fund
   Road Fund
   Bridge Fund
   Poor Fund
   Library Fund
   District court Fund
   Mental Health Fund

   Commencement of Mining Operations: 1986

   3 Year Average Calculated for Budget Years: 1983, 1984, 1985

   Add the mill levies for the fund for each of the three years. Divide by three. The result is the three year average mill levy, or base mill levy for purposes of crediting prepaid taxes as provided by the Impact Act.

B. For each fund, determine the total budget for the coming fiscal year.

C. From the total budget subtract cash-on-hand and non-property tax revenue, as identified in column 7 of the tax levy requirement schedule, BARS Form D-35, November, 1977, to arrive at the portion of the budget financed through property taxes.

D. Divide the property tax budget, as determined above, by the three year average mill levy to determine the taxable valuation necessary to maintain services.

NOTE: If the three year average mill levy exceeds the statutory mill levy limit, use the statutory limit in making this calculation and the calculations below.

E. Subtract the amount in D from the total taxable valuation of the taxing jurisdiction.

If the total taxable valuation is less than D, no tax credit is due.

NOTE: As a cross-check, you may also wish to divide the increased costs attributed to the mineral development by the three year average mill levy (or statutory limit, if that is less) to determine the base valuation the development will need to maintain in order to meet increased costs. If the actual valuation is less than the base valuation, no tax credit is due. A tax prepayment may be needed, unless non-tax revenue resulting from the development is sufficient to make up the difference so that there is no net operating cost. If the actual valuation of the development is greater than the base valuation, a tax credit may be due, provided that the total taxable valuation exceeds D (the amount necessary to maintain services at the base mill levy.)

F. If the total taxable valuation exceeds D, (the amount necessary to maintain services at the base mill levy), reduce the taxable valuation of the property for which taxes were prepaid by the amount of the "excess," but not by an amount greater than the taxable valuation of the property.

G. The reduction in taxable valuation times the 3 year average mill levy (or statutory limit, if applicable) equals the tax credit allowed for that fund for that tax year.

H. After the final budget is set and well before individual tax statements must be sent out, the governing body must notify the County Assessor of the amount of tax credit by fund. This should be done before September 1st of each year.

ATTACHMENT B

SAMPLE TAX CREDIT PROCEDURE

I. List tax crediting policies. (See criteria above or sample policies in Attachment C.)

II. Calculate the average mill levy for the three years prior to the commencement of mining activity under the operating permit. Adjust for special circumstances, if necessary, to arrive at an acceptable base mill levy not related to mining activity.

III. Calculate tax credits by fund and by fiscal year:

Refer to the accompanying tax crediting sheet, Attachment B-1:

(1) Tax prepayment. Identify from plan and from monitoring.

NOTE: No tax credit is due in years in which a tax prepayment is owed.

(2) Development related increased costs. Identify from plan and from monitoring.

(3) Development related increased non-tax revenue. Identify from plan and from monitoring.

(4) Development related tax revenue needed to pay net costs: (4) = (2) - (3) - (1).

(5) Property tax revenue budget. From budget sheet: total budget for fund less non-tax revenue, intergovernmental transfers, and prior year revenues (reserves).

(6) Total taxable valuation. From Department of Revenue, county assessor.

(7) Mill levy: (5) -- (6) = (7).

NOTE: If the potential mill levy exceeds the three-year average or base mill levy, an adjustment may be necessary. See item (11) below.

(8) Developer's taxable valuation. From Department of Revenue, county assessor. Assessment date is January 1.

(9) Developer's potential tax obligation: (7) x (8) = (9).

NOTE:

(a) Increased costs are being met if:

(9) = (4), and
(9) + (1) + (3) = (2)

(b) An additional tax prepayment may be needed if

(9) is less than (4), and
(9) + (1) + (3) is less than (2)

(c) A tax credit is due if:

(9) is greater than (4), and
(9) + (1) + (3) is greater than (2)

(10) Developer's tax credit, depending on the plan's tax crediting policies, may be either:

a. Eligible tax credit = (9) - (4); or

b. Adjusted tax credit = [(9) - (4)] x __ %.

(11) Developer's adjusted tax obligation: (9) - (10) = (11).

(12) Developer's adjusted tax prepayment, if any. An additional tax prepayment may be needed as indicated by (9)(b) or if the mill levy (7) is greater than the base mill levy. The amount of additional tax prepayment can be calculated as follows:

a. If 9(b) indicates the need for an additional tax prepayment: (2) - [(9) + (3) + (1)] = the amount of the prepayment needed.

b. If the potential mill levy (7) exceeds the base mill levy, determine how much, if any, of this excess is a result of the mineral development:

(a) Non-mining related property tax budget: (a) = (5) - (4).

(b) Adjusted mill levy: (b) = (a) -- [(6) - (8)].

Replace (7) with the adjusted mill levy (b), and recalculate the subsequent steps.

(c) Additional tax prepayment. If increased costs resulting from the development are to be paid by increased revenues resulting from the development (9) + (3) + (1) should = (2).

If (9) + (3) + (1) is less than (2), an additional tax prepayment may be needed. The amount of the additional prepayment = (2) - [(9) + (3) + (1)].

A tax prepayment that was not projected by the impact plan requires an adjustment or an amendment to the impact plan.

(13) Remaining credits due. Running total of remaining credits due = total of all tax prepayments less total of all tax credits.

NOTE: After the final budget is set and well before individual tax statements must be sent out, the governing body must notify the County Assessor of the amount of tax credit by fund. This should be done before September 1st of each year.

*****

FOOTNOTES: ATTACHMENT B - 1

NA.1 = Not applicable prior to commencement of mining.
NA.2 = No tax credit is due when a tax prepayment is owed.
NA.3 = Tax credit may not exceed tax obligation.

*1 If the potential mill levy is greater than the base mill levy or the statutory mill levy limit), whichever is less, refer to instructions for (11).

*2 Does (9) = (4) and do (9) + (3) + (1) = (2)? If not, see instructions for (9) and (12).

*3 If (10) exceeds (13) from the previous fiscal year, use (13) from the previous fiscal year in place of (10).

See tax crediting policies, Attachment C. (10) may equal (9) - (4) times a percentage established in the tax crediting policies.

*4 An additional tax prepayment must be authorized through an adjustment or amendment to the impact plan.

Question: if the fund had ample reserves, could the local government unit with the written concurrence of the developer, take the additional prepayment from the reserve in FY-1 and subtract that amount from the amount of credit owed to the developer?

ATTACHMENT C

SAMPLE TAX CREDITING POLICIES

Beginning the year following the year in which the mine begins production, the governing body will calculate and provide tax credits in a manner consistent with the purpose and requirements of the Hard-Rock Mining Impact Act and the policies and requirements of this impact plan.

The governing body need not provide a tax credit if the credit will result in reduction in level of service to other taxpayers.

The governing body need not provide a credit if the credit will increase the mill levy above the base levy or above what would be needed for the budget without development related costs.

In calculating tax credits, the governing body may adjust projected development related costs as appropriate to account for inflation and other factors affecting the cost of services for the fund in question. For example, the governing body may add an inflation factor to the projected development related costs, if the plan does not adequately project inflation.

Based on the calculations in the tax crediting sheet, each year the governing body may credit the developer with ___ percent of the potential tax credit identified in column (10). (Spreading credits out over more years of the mine's life will both accelerate and "even out" the beneficial impact the mineral development has on the local tax base. However, any such percentage should be calculated in a way that ensures that, barring other constraints, all prepaid taxes will be credited to the developer during the anticipated productive life of the mine.)

ATTACHMENT A-1

bridge.bnk

BRIDGE FUND

FY	(1) Tax Prepayments	(2) 3 yr. Avg. Mill Levy	(3) Property Tax Revenue Budget (9)x(5)	(4) Base Valuation (3)-(2)	(5) Total Taxable Valuation	(6) Excess or Deficit Valuation (5)-(4)	(7) Tax Credit = (2)x(6)	(8) Developers Taxable Valuation	(9) Mill Levy	(10) Developer's Tax Obligation (8)x(9)	(11) Developer's Adjusted Taxable Valuation (8)-(6)	(12) Developer's Adjusted Tax (10)-(7)	(13) Remaining Credits Due = Tax Prepayments Less Tax Credits (running total)

NA = Not Applicable prior to commencement of mining.
No tax credit is due for years in which a tax prepayment is owed.
Tax credit may not exceed tax obligaiton.

FY __: Mineral development commences operations, i.e. begins construction. Calculated average mill levy for preceding 3 fiscal years.
FY __: Mine starts production. Beginning with next fiscal year's budget, calculate tax credits.
*Statutory mill levy limit.

ATTACHMENT A-1.1

bridge.wk4

BRIDGE FUND

FY	(1) Tax Prepayments	(2) 3 yr. Avg. Mill Levy	(3) Property Tax Revenue Budget (9)x(5)	(4) Base Valuation (3)-(2)	(5) Total Taxable Valuation	(6) Excess or Deficit Valuation (5)-(4)	(7) Tax Credit = (2)x(6)	(8) Developer's Taxable Valuation	(9) Mill Levy	(10) Developer's Tax Obligation (8)x(9)	(11) Developer's Adjusted Taxable Valuation (8)-(6)	(12) Developer's Adjusted Tax (10)-(7)	(13) Remaining Credits Due = Tax Prepayments Less Tax Credits (running total)
83	$0	0.00475	$64,752	$13,631,914	$14,389,243	$757,329	N/A	$0	0.0045	$0	N/A	N/A	$0
84	$0	0.00475	$71,145	$14,977,996	$14,977,996	$0	N/A	$25,217	0.00475	$120	N/A	N/A	$0
85	$647	0.00475	$76,906	$16,190,679	$15,381,145	($809,534)	N/A	$23,702	0.005	$119	N/A	N/A	$647
86	$5,702	0.00475	$85,105	$17,916,855	$17,021,012	($895,843)	N/A	$77,519	0.005	$388	N/A	N/A	$6,349
87	$6,991	0.00475	$85,916	$18,087,619	$17,183,238	($904,381)	N/A	$394,108	0.005	$1,971	N/A	N/A	$13,340
88	$0	0.00475	$89,809	$18,907,080	$17,961,726	($945,354)	$0	$2,149,694	0.005	$10,748	$0	$10,748	$13,340

Early 1986, FY 86: Mineral development commences operations, i.e. begins construction. Calculated average mill levy for preceding 3 fiscal years.
Late 1986, FY 87: Mine starts production. Beginning with next fiscal year's budget, calculate tax credits.
•Statutory mill levy limit.

N/A 1. Not Applicable prior to commencement of mining.
2. No tax credit is due for years in which a tax prepayment is owed.
3. Tax credit may not exceed tax obligation.

ATTACHMENT A-1.2

bridge.wk6

BRIDGE FUND

FY	(1) Tax Prepayments	(2) 3 yr. Avg. Mill Levy	(3) Property Tax Revenue Budget (9) x (5)	(4) Base Valuation (3)-(2)	(5) Total Taxable Valuation	(6) Excess or Deficit Valuation (5)-(4)	(7) Tax Credit = (2)x(6)	(8) Developer's Taxable Valuation	(9) Mill Levy	(10) Developer's Tax Obligation (8)x(9)	(11) Developer's Adjusted Taxable Valuation (8)-(6)	(12) Developer's Adjusted Tax (10)-(7)	(13) Remaining Credits Due = Tax Prepayments Less Tax Credits (running total)
83	$0	0.005	$71,946	14,389,243	$14,389,243	0	N/A	$0	0.005	$0	N/A	N/A	$0
84	$0	0.005	$74,890	14,977,996	$14,977,996	0	N/A	$25,217	0.005	$126	N/A	N/A	$0
85	$647	0.005	$76,906	15,381,145	$15,381,145	0	N/A	$23,702	0.005	$119	N/A	N/A	$647
86	$5,702	0.005	$85,105	17,021,012	$17,021,012	0	N/A	$77,519	0.005	$388	N/A	N/A	$6,349
87	$6,991	0.005	$85,916	17,183,238	$17,183,238	0	N/A	$394,108	0.005	$1,971	N/A	N/A	$13,340
88	$0	0.005	$89,809	17,961,726	$17,961,726	0	$0	$2,149,694	0.005	$10,748	$2,149,694	$10,748	$13,340

Early 1986, FY 86: Mineral development commences operations, i.e. begins construction. Calculated average mill levy for prededing 3 fiscal years.
Late 1986, FY 87: Mine starts production. Beginning with next fiscal year's budget, calculate tax credits.
*Statutory mill levy limit.

N/A 1. Not Applicable prior to commencement of mining.
2. No tax credit is due for years in which a tax prepayment is owed.
3. Tax credit may not exceed tax obligation.

ATTACHMENT A-1.3

bridge.wk2

BRIDGE FUND

FY	(1) Tax Prepayments	(2) 3 yr. Avg. Mill Levy	(3) Property Tax Revenue Budget (9)x(5)	(4) Base Valuation (3)-(2)	(5) Total Taxable Valuation	(6) Excess or Deficit Valuation (5)-(4)	(7) Tax Credit = (2)x(6)	(8) Developer's Taxable Valuation	(9) Mill Levy	(10) Developer's Tax Obligation (8)x(9)	(11) Developer's Adjusted Taxable Valuation (8)-(6)	(12) Developer's Adjusted Tax (10)-(7)	(13) Remaining Credits Due = Tax Prepayments Less Tax Credits (running total)
83	$0	0.00542	$86,335	$15,929,051	$14,389,243	($1,539,808)	N/A	$0	0.006	$0	N/A	N/A	$0
84	$0	0.00542	$74,890	$13,817,339	$14,977,996	$1,160,657	N/A	$25,217	0.005	$126	N/A	N/A	$0
85	$647	0.00542	$80,751	$14,898,711	$15,381,145	$482,434	N/A	$23,702	0.00525	$124	N/A	N/A	$647
86	$5,702	0.00542	$89,360	$16,487,143	$17,021,012	$533,869	N/A	$77,519	0.00525	$407	N/A	N/A	$6,349
87	$6,991	0.00542	$90,212	$16,644,280	$17,183,238	$538,958	N/A	$394,108	0.00525	$2,069	N/A	N/A	$13,340
88	$0	0.00542	$89,809	$16,569,926	$17,961,726	$1,391,800	$7,544	$2,149,694	0.005	$10,748	$757,894	$3,205	$5,796

Early 1986, FY 86: Mineral development commences operations, i.e. begins construction. Calculated average mill levy for preceding 3 fiscal years.
Late 1986, FY 87: Mine starts production. Beginning with next fiscal year's budget, calculate tax credits.
*Statutory mill levy limit.

N/A 1. Not Applicable prior to commencement of mining.
2. No tax credit is due for years in chich a tax prepayment is owed.
3. Tax credit may not exceed tax obligation.

ATTACHMENT B-1.

Three Year Average or
Base Mill Levy: _____.

LOCAL GOVERNMENT FUND: BRIDGE FUND

FY	(1) Tax Prepayments	(2) Development Related Increased Costs	(3) Development Related Non-Tax Revenue	(4) Needed Development Related Tax Revenue	(5) Property Tax Revenue Budget	(6) Total Taxable Valuation	(7)*1 Potential Mill Levy	(8) Developer's Taxable Valuation	(9)*2 Developer's Potential Tax Obligation	(10)*3 Developer's Tax Credit	(11) Developer's Adjusted Tax Obligation	(12)*4 Developer's Potential Additional Tax Prepayment	(13) Remaining Credits Due =Running Total Of All Tax Prepayments Less All Tax Credits
Source	Plan and Monitoring	Plan and Monitoring	Plan and Monitoring	4=2-3-1	Budget Sheet	DOR/ Assessor	7=5-6	DOR/ Assessor	9=7x8	10=9-4 When Positive	11=9-10	12=9-4 When Negative	

NA.1 = Not applicable prior to commencement of mining.
NA.2 = No tax credit is due in years when a tax prepayment is owed.
NA.3 = Tax credit may not exceed tax obligaiton.

*1 If the potential mill levy is greater than the base mill levy or the statutory limit, whichever is less, refer to instructions for (11).
*2 Does (9) = (4) and do (9) + (1) + (3) = (2)? If not, see instructions for (9) and (12).
*3 See tax credit policies, Attachment C: (10) may equal [(9) - (4)] x ___%.
*4 Requires adjustment or amendment to plan.

Beginning of Mining Activity:
Beginning of Production:

b-1.blank

ATTACHMENT B-1.1

Three Year Average or
Base Mill Levy: _____.

LOCAL GOVERNMENT FUND: BRIDGE FUND

FY	(1) Tax Prepayments	(2) Development Related Increased Costs	(3) Development Related Non-Tax Revenue	(4) Needed Development Related Tax Revenue	(5) Property Tax Revenue Budget	(6) Total Taxable Valuation	(7)•1 Potential Mill Levy	(8) Developer's Taxable Valuation	(9)•2 Developer's Potential Tax Obligation	(10)•3 Developer's Tax Credit	(11) Developer's Adjusted Tax Obligation	(12)•4 Developer's Potential Additional Tax Prepayment	(13) Remaining Credits Due =Running Total Of All Tax Prepayments Less All Tax Credits
Source	Plan and Monitoring	Plan and Monitoring	Plan and Monitoring	4=2-3-1	Budget Sheet	DOR/ Assessor	7=5-6	DOR/ Assessor	9=7x8	10=9-4 When Positive	11=9-10	12=9-4 When Negative	
83 86	$647	$647	$0	$0						NA.1			$647
87	$5,702	$7,673	$0	$1,971	$85,916	$17,183,238	.005	$394,108	$1,971	NA.2	$1,971	$0	$6,349
88	$6,991	$17,769	$300	$10,478	$89,809	$17,961,726	.005	$2,149,694	$10,478	NA.2	$10,478	$0	$13,340
89	$0	$9,387	$300	$9,087	$94,299	$18,859,100	.005	$2,153,720	$10,768	$1,681	$9,087	$0	$11,659
90	$0	$9,574	$300	$9,274	$94,808	$18,961,726	.005	$2,190,503	$10,952	$1,678	$9,274	$0	$9,980

NA.1 = Not applicable prior to commencement of mining.
NA.2 = No tax credit is due in years when a tax prepayment is owed.
NA.3 = Tax credit may not exceed tax obligaiton.

•1 If the potential mill levy is greater than the base mill levy or the statutory limit, whichever is less, refer to instructions for (11).
•2 Does (9) = (4) and do (9) ÷ (1) ÷ (3) = (2)? If not, see instructions for (9) and (12).
•3 See tax credit policies, Attachment C: (10) may equal [(9) - (4)] x ___%.
•4 Requires adjustment or amendment to plan.

Beginning of Mining Activity: Early 1986/FY 86
Beginning of Production: Late 1986/FY 87

b-1.wk1

ATTACHMENT B-1.2

Three Year Average or
Base Mill Levy: _____.

LOCAL GOVERNMENT FUND: BRIDGE FUND

FY	(1) Tax Prepayments	(2) Development Related Increased Costs	(3) Development Related Non-Tax Revenue	(4) Needed Development Related Tax Revenue	(5) Property Tax Revenue Budget	(6) Total Taxable Valuation	(7)•1 Potential Mill Levy	(8) Developer's Taxable Valuation	(9)•2 Developer's Potential Tax Obligation	(10)•3 Developer's Tax Credit	(11) Developer's Adjusted Tax Obligation	(12)•4 Developer's Potential Additional Tax Prepayment	(13) Remaining Credits Due =Running Total Of All Tax Prepayments Less All Tax Credits
Source	Plan and Monitoring	Plan and Monitoring	Plan and Monitoring	4=2-3-1	Budget Sheet	DOR/ Assessor	7=5-6	DOR/ Assessor	9=7x8	10=9-4 When Positive	11=9-10	12=9-4 When Negative	
83 86	$0	$0	$0	$0						NA.1			$647
87	$5,702	$7,673	$0	$1,971	$85,916	$17,183,238	.005	$394,108	$1,971	NA.2	$1,971	$0	$6,349
88	$789	$7,690	$0	$6,901	$89,809	$17,961,726	.005	$2,149,694	$6,901	NA.2	$6,901	$0	$7,138
89	$0	$8,321	$0	$8,321	$94,299	$18,859,100	.005	$2,153,720	$10,478	$2,157	$8,321	$0	$4,981
90	$0	$12,437	$0	$12,437	$94,808	$18,961,726	.005	$2,190,503	$10,953	$0	$10,953	$1,484	$6,465
91	$0	$8,017	$0	$8,017	$94,660	$18,932,004	.005	$2,189,673	$10,948	$2,931	$8,017	$0	$3,534
92	$0	$11,237	$0	$11,237	$97,021	$19,404,200	.005	$2,693,028	$13,465	$2,228	$11,237	$0	$1,306
93	$0	$8,042	$0	$8,042	$94,530	$18,906,000	.005	$2,583,670	$12,918	•3 $1,306	$11,612	$0	$0
94	$0	$8,273	$0	$8,273	$95,247	$19,049,400	.005	$2,785,293	$13,926	$0	$13,926	$0	$0
T	$7,138	$72,337	$0	$65,199					$81,550	$8,622	$72,938	$1,484	$0

NA.1 = Not applicable prior to commencement of mining.
NA.2 = No tax credit is due in years when a tax prepayment is owed.
NA.3 = Tax credit may not exceed tax obligaiton.

•1 If the potential mill levy is greater than the base mill levy or the statutory limit, whichever is less, refer to instructions for (11).
•2 Does (9) = (4) and do (9) + (1) + (3) = (2)? If not, see instructions for (9) and (12).
•3 See tax credit policies, Attachment C: (10) may equal [(9) - (4)] x ___%.
•4 Requires adjustment or amendment to plan.

Beginning of Mining Activity: Early 1986/FY 86
Beginning of Production: Late 1986/FY 87

ATTACHMENT B-1.3

Three Year Average or
Base Mill Levy: _____.

LOCAL GOVERNMENT FUND: BRIDGE FUND

FY	(1) Tax Prepayments	(2) Development Related Increased Costs	(3) Development Related Non-Tax Revenue	(4) Needed Development Related Tax Revenue	(5) Property Tax Revenue Budget	(6) Total Taxable Valuation	(7)*1 Potential Mill Levy	(8) Developer's Taxable Valuation	(9)*2 Developer's Potential Tax Obligation	(10)*3 Developer's Tax Credit	(11) Developer's Adjusted Tax Obligation	(12)*4 Developer's Potential Additional Tax Prepayment	(13) Remaining Credits Due =Running Total Of All Tax Prepayments Less All Tax Credits
Source	Plan and Monitoring	Plan and Monitoring	Plan and Monitoring	4=2-3-1	Budget Sheet	DOR/ Assessor	7=5-6	DOR/ Assessor	9=7x8	10=9-4x.6 When Positive	11=9-10	12=9-4 When Negative	
83 86	$0	$0	$0	$0						NA.1			$647
87	$5,702	$7,673	$0	$1,971	$85,916	$17,183,238	.005	$394,108	$1,971	NA.2	$1,971	$0	$6,349
88	$789	$7,690	$0	$6,901	$89,809	$17,961,726	.005	$2,149,694	$6,901	NA.2	$6,901	$0	$7,138
89	$0	$8,321	$0	$8,321	$94,299	$18,859,100	.005	$2,153,720	$10,478	$1,294	$9,184	$0	$5,844
90	$0	$12,437	$0	$12,437	$94,808	$18,961,726	.005	$2,190,503	$10,953	$0	$10,953	$1,484	$7,328
91	$0	$8,017	$0	$8,017	$94,660	$18,932,004	.005	$2,189,673	$10,948	$1,759	$9,189	$0	$5,569
92	$0	$11,237	$0	$11,237	$97,021	$19,404,200	.005	$2,693,028	$13,465	$1,337	$12,128	$0	$4,232
93	$0	$8,042	$0	$8,042	$94,530	$18,906,000	.005	$2,583,670	$12,918	*3 $2,926	$9,992	$0	$1,306
94	$0	$8,273	$0	$8,273	$95,247	$19,049,400	.005	$2,785,293	$13,926	*3 $1,306	$12,620	$0	$0
T	$7,138	$72,337	$0	$65,199					$81,550	$8,622	$72,938	$1,484	

NA.1 = Not applicable prior to commencement of mining.
NA.2 = No tax credit is due in years when a tax prepayment is owed.
NA.3 = Tax credit may not exceed tax obligaiton.

*1 If the potential mill levy is greater than the base mill levy or the statutory limit, whichever is less, refer to instructions for (11).
*2 Does (9) = (4) and do (9) + (1) + (3) = (2)? If not, see instructions for (9) and (12).
*3 See tax credit policies, Attachment C: (10) may equal [(9) - (4)] x ___%.
*4 Requires adjustment or amendment to plan.

Beginning of Mining Activity: Early 1986/FY 86
Beginning of Production: Late 1986/FY 87

TAX PREPAYMENT AND TAX CREDITING

The Hard-Rock Mining Impact Act requires that each year after the mine begins commercial production local governments calculate tax credits for taxes that have been prepaid by the developer pursuant to the approved impact plan.

The original 1981 Act contains a formula by which the local governing body is required to calculate tax credits. Under the 1981 statutes tax credits are to be achieved by means of reducing the taxable valuation of the mineral development for the affected local government unit.

In 1985 the Legislature amended the Act to require that the impact plan itself specify how tax crediting would be accomplished. The amendment does not affect the purposes of the Act or the principles underlying the provision of tax credits, but it does eliminate both the original, somewhat cumbersome formula, and the reduction of the development's taxable valuation as the means of providing tax credits.

All plans submitted for formal review on or after July 1, 1985, are subject to the 1985 amendments. The amended statute is reproduced below for easy reference. For plans submitted prior to July 1, 1985, note that the original 1981 provisions are included in the compiler's notes.

In the Act, "the board" refers to the Hard-Rock Mining Impact Board.

TAX PREPAYMENT, 90-6-309, MCA. (1985)

90-6-309. **Tax prepayment -- large-scale mineral development.** (1) After permission to commence operation is granted by the appropriate governmental agency, and upon request of the governing body of a county in which a facility is to be located, a person intending to construct or locate a large-scale mineral development in this state shall prepay property taxes as specified in the impact plan. This prepayment shall exclude the 6-mill university levy and may exclude the mandatory county levy for the school foundation program of 45 mills.

(2) The person who is to prepay under this section shall not be obligated to prepay the entire amount established in subsection (1) at one time. Upon request of the governing body of an affected local government unit, the person shall prepay the amount shown to be needed from time to time as determined by the board.

(3) The person who is to prepay shall guarantee to the hard-rock mining impact board, through an appropriate financial institution, as may be required by the board, that property tax prepayments will be paid as needed for expenditures created by the impacts of the large-scale mineral development.

(4) When the mineral development facilities are completed and assessed by the department of revenue, they shall be subject during the first 3 years and thereafter to taxation as all other property similarly situated, except that in each year after the start of production, the local government unit that received a property tax prepayment shall provide for repayment of prepaid property taxes in accordance with subsection (5).

(5) A local government unit that received all or a portion of the property tax prepayment under this section shall provide for tax crediting as specified in the impact plan. The tax credit allowed in any year may not, however, exceed the tax obligation of the developer for that year, and the time period for tax crediting is limited to the productive life of the mining operation.

History: Enc. Sec. 10, Ch. 617, L. 1981; amd. Sec. 4, Ch. 489, L. 1983; amd. Sec. 6, Ch. 582, L. 1985.

Compiler's Comments:
1985 amendment: In (1) at end of first sentence substituted "as specified in the impact plan" for "in an amount equal to at least three times the estimated property tax due the year the large-scale mineral development facility commences operation" and in last sentence increased mills from 40 to 45; and in (5) after "shall provide for", substituted present language of remainder of subsection for "repayment according to the following procedure:

(a) In each year after the commencement of mining, the local government shall:

(i) divide its budget by the average mill levy of its jurisdiction during the 3 years immediately preceding commencement of mining operations, to arrive at a taxable valuation needed to fund its budget using the average 3-year mill levy;

(ii) reduce the taxable valuation of property of a person who prepaid property taxes by the excess, if any, of the total taxable value of the taxing jurisdiction including the person's property over the taxable value determined under subsection (5)(a)(i), but in no case by an amount greater than the taxable value of the person's property.

(b) The reduction in taxable value, if any, determined under subsection (5)(a)(ii) times the average mill levy used in subsection (5)(a)(i) equals the property tax prepayment credit allowed for the taxable year for that local government unit. Any local government unit not receiving a payment shall not be affected by this section, and no reduction in value shall be used in the computation of taxes due that unit of local government. In no event shall the credit allowed under this part extend more than 10 years beyond the date the prepayment is made under this section.

(c) The procedure established under subsection (5)(a) shall continue from year to year until the total credit allowed the person who prepaid property taxes equals the total property taxes prepaid".

1983 Amendment: Near beginning of (1), substituted "governing body" for "board of county commissioners"; and in (3), substituted "through an appropriate financial institution" for "with appropriate bank guarantees".

Cross-References:
Property tax levies, Title 15, ch. 10. Tax prepayment -- new industrial facilities, 15-16-201.

Questions about tax prepayment and tax crediting may be addressed to the Hard-Rock Mining Impact Board or to the Local Government Services Bureau, Local Government Assistance Division, Montana Department of Commerce, Capitol Station, Helena, Montana 59620, (406) 444-3010, attention: Jim Courtney.

APPENDIX XIII

IMPLEMENTATION OF THE PROPERTY TAX BASE SHARING ACT

Introduction

The Hard-Rock Mining Impact Act requires the developer of each proposed large-scale mineral development in the State to prepare an impact plan to identify the increased cost to local government units of services and facilities that will be needed as a result of the mineral development. These increased costs may occur in the taxing jurisdictions in which the mine is located, or they may occur in other jurisdictions which do not ordinarily have the authority to tax the mine.

All real property in the State is located in at least three major local government taxing jurisdictions: a county, a high school district and an elementary school district. The property may also be located in and taxed by an incorporated city or town or one or more special purpose districts, such as a rural fire district or county water and sewer district. The governing body of each local government unit sets its own budget and applies its mill levy to the taxable valuation of all property within its taxing jurisdiction.

Sometimes an impact plan projects that increased local government costs will occur in a county, municipality or school district which cannot tax the mine. This condition is called a "jurisdictional revenue disparity."

The Hard-Rock Mining Impact Act and the companion Property Tax Base Sharing Act provide that when the impact plan identifies a jurisdictional revenue disparity, part of the taxable valuation of the new, large-scale mineral development is to be shared between (a) those counties and school districts in which the mine is located and (b) other counties, municipalities and school districts which will incur increased costs as a result of the mine.

For the specific provisions of the Hard-Rock Mining Impact Act and the Property Tax Base Sharing Act, see Parts 3 and 4, Title 90, Chapter 6, MCA, particularly sections 90-6-307 and 90-6-309, MCA and all of Part 4.

I. General Requirements

Under the Property Tax Base Sharing Act, when the impact plan identifies a jurisdictional revenue disparity, the Department of Revenue is to allocate among the affected local government units the **increase** in taxable valuation of the mineral development that occurs after the mine receives its operating permit. Unlike the Impact Act, the Tax Base Sharing Act applies to affected counties and municipalities, elementary school districts, and high school districts, but not to special purpose districts.

The annual allocation of the increase in taxable valuation is based on a report filed with the Department of Revenue each year by the mineral developer. The report identifies the **place of residence** of mineral

development employees and their school-age children. The allocation of taxable valuation corresponds to the percentage of employees or students living in each affected local government unit. A separate allocation occurs in each of three categories:

1. Instead of the entire taxable valuation of the mineral development being subject to taxation by the county in which the mine is located, the **increase** in valuation may be shared with one or more other counties or with one or more municipalities, although no more than 20 percent of the increase may be allocated to municipalities.

2. Instead of the entire taxable valuation of the mineral development being subject to taxation by the high school district in which the mine is located, the **increase** in valuation may be apportioned among two or more high school districts.

3. Instead of the entire taxable valuation of the mineral development being subject to taxation by the elementary school district in which the mine is located, the **increase** in valuation may be shared among two or more elementary school districts.

The taxable valuation of the mineral development just prior to the issuance of the permit is the base amount from which the increase is calculated each year. The **base** taxable valuation remains with the jurisdictions in which the mine is located.

The **total** taxable valuation of the mineral development continues to be subject to the statewide levies for the school foundation program and the university system.

Not every impact plan will result in tax base sharing. Each mineral development, local government unit, and impact plan represents a unique set of circumstances. However, some of the same considerations will apply whenever the Tax Base Sharing Act is implemented.

The Tax Base Sharing Act was first implemented in Stillwater County as a result of the impact plan for the platinum and palladium mine developed near Nye, Montana, by the Stillwater Mining Company (SMC). The following is adapted from an outline prepared by the Stillwater County Assessor. It generally reflects the procedure used by Stillwater Mining Company, the Department of Revenue, and Stillwater County to meet the requirements of the Property Tax Base Sharing Act and the Stillwater Impact Plan.

II. Definitions

1. "Affected Local Government Unit" means a local government unit that will experience a need to increase services or facilities as a result of the commencement of large-scale mineral development or within which a large-scale mineral development is located in accordance with an impact plan adopted pursuant to 90-6-307. (Statutory: see 90-6-402, MCA.)

2. "Jurisdictional Revenue Disparity" means property tax revenues resulting from large-scale hard-rock mineral development that are inequitably distributed among affected local government units as finally determined by

the [hard-rock mining impact] board in an approved impact plan. (Statutory: see 90-6-402, MCA.)

3. "Large-Scale Mineral Development" means the construction or operation of a hard-rock mine and the associated milling facility for which a permit is applied ... under 82-4-335 on or after May 18, 1981, and for which the average number of persons on the payroll of the mineral developer exceeds or is projected to exceed 75 persons for any consecutive 6-month period. (Statutory, effective 1985: see 90-6-302, MCA. Note: the Stillwater plan is subject to the original Impact Act which defines a "large-scale mineral development" as one which employees at least 100 people at any given time or which causes an increase of 15 percent in the population of an affected local government unit.)

4. A. "Mineral Development [Residing] Employee" means a person who resides within the jurisdiction of an affected local government unit as a result of employment with a large-scale mineral development or its contractors or subcontractors. (Statutory: see 90-6-402, MCA.)

   B. "Total Mineral Development Employees" means the total number of persons employed at any given time in the construction or operation of the mineral development by the mineral developer or its contractors or subcontractors.

5. "Mineral Development Residing Student" means a student whose parent or guardian resides within the jurisdiction of an affected local government unit as a result of employment with a large-scale mineral development or its contractors or subcontractors. (Statutory: see 90-6-402, MCA.)

6. "Taxable Valuation" of a mineral development means the total of the gross proceeds taxable percentage specified in 15-6-132(2)(a) when added to the taxable percentages of real property, improvements, machinery, equipment, and other property classified under Title 15, chapter 6, part 1. (Statutory: see 90-6-402, MCA.)

III. Role of the County Assessor and the County Treasurer

The County Assessor, as an agent of the Department of Revenue, will allocate the increase in taxable valuation as provided by sections 90-6-403 and 90-6-404, MCA, of the Property Tax Base Sharing Act. The allocation will be consistent with the provisions of sections 15-6-101 through 15-6-146, MCA, and with other requirements of the assessment procedure.

Montana law establishes 20 classes of property subject to property taxation. The taxable value of property in each class is calculated by multiplying the market value of the property by a percentage which, as provided by statute, may range from 0 percent to 100 percent. Each formula for calculating taxable valuation is denoted by a specific "code."

As provided by section 15-8-701, MCA, the County Assessor provides an assessment notice to each taxpayer. The assessment notice identifies the market value and the taxable value of the taxpayer's property, the class and code by which it is assessed, and the revenue districts in which the property is located.

The County Treasurer sends a tax notice to each taxpayer in the county. The tax notice applies the individual mill levies of the county, municipality (if applicable), elementary school district and high school district in which the property is located to the taxable valuation of the property. The tax notice identifies each mill levy and the total amount of tax to be paid by the taxpayer.

Tax base sharing does not affect the taxable valuation of the mineral development. However, where tax base sharing is in effect, the assessment and tax notices will include a greater number of local government units, each of which applies its own mill levy to its allocated portion of the taxable valuation of the mineral development.

IV. Taxable Valuation of the Mineral Development and the Base Year

As defined by statute, the taxable valuation of the mineral development encompasses all property associated with the mineral development: the taxable property of the developer, including gross proceeds of the mine, and other taxable property located at the site of the mine and mill but owned by contractors or subcontractors. Tax base sharing does not apply to increased taxable valuation which results from, but is not part of, the mineral development itself, such as the valuation of a new mobile home park or subdivision.

The increase in the development's taxable valuation is calculated each year by reference to its taxable valuation as of January 1st of the year in which the permit was issued. January 1st is the assessment date established by section 15-8-408, MCA, and represents the most recent assessment prior to the issuance of the permit. The base taxable valuation remains constant and is not allocated.

As the development is constructed and moves into production, its total taxable valuation will increase. However, from year to year the taxable value of property within an individual class and code may be greater or less than it was in the base year.

The allocation procedure described below provides a formula to ensure that the base year taxable valuation is held constant in calculating and allocating each year's increase in taxable valuation.

V. The Mineral Developer's Employee Place-of-Residence Survey

The Property Tax Base Sharing Act requires the mineral developer to conduct annual employee surveys to identify the number and place of residence of all mineral development employees and their school-age children. The survey encompasses both local and inmigrating employees of the developer and of contractors and subcontractors employed at the site in the construction or operation of the mine or mill.

The developer must file an employee place-of-residence report with the Department of Revenue on or before May 1st of each year. Copies of the Stillwater report are provided to the Department of Revenue in Helena, the Stillwater County Assessor (an agent of the Department), each affected local

government unit, and the Hard-Rock Mining Impact Board. (Because of other provisions in the Stillwater impact plan, SMC prepares a quarterly monitoring report for Stillwater County local governments and uses the March 31st monitoring report for its annual report to the Department of Revenue.)

Sample employee place-of-residence surveys and reports are attached.

The developer should provide a preliminary employee place-of-residence report to each affected local government to determine whether the report coincides with the governing body's perception of the number of employees or students residing within its jurisdiction. If local government officials find any apparent inaccuracy in the report, they should notify the developer and the county assessor as soon as possible to enable the developer to review the questioned numbers and correct any errors. The parties to tax base sharing might want to establish a time limit within which the local governments and developer must review and correct employee reports. The Stillwater County Assessor recommends that the review and corrections should be completed within 30 days of the filing date of the report in order not to delay the assessment process.

School districts may find that the number of mineral development students attending school in the district differs from the number residing in the district because some students attend school in a district other than the one in which they reside. Except for the first year of the development (which precedes any increase in taxable valuation,) tax base sharing is based on the total number of mineral development students residing in the district, including both local and inmigrating students.

Because it is based solely on the distribution of population, the tax base sharing formula divides the increased tax base resulting from the development among all affected local government units without respect to increased costs. However, where the allocation does correspond to increased costs resulting from the development, the developer may meet some or all of those costs through the payment or prepayment of taxes (for which credits must be given) rather than through grants alone.

The impact plan must identify all increased costs that will result from the mineral development and provide for the developer's payment of those costs. The plan addresses costs in the jurisdictions in which they occur, regardless of the place of residence of the employees or students. Therefore, if tax base sharing will not generate adequate revenue to meet increased costs in any affected local government unit, the remaining costs must still be paid by the developer, as provided by in the impact plan.

VI. Adjusting the Total Number of Mineral Development Employees from the Place-of-Residence Report for Tax Base Sharing Purposes:

Because the developer's employee place-of-residence report includes all employees of the mineral development, it may show that some employees or students live in local government units which are not identified in the impact plan as "affected local government units." If this occurs, these employees or students must be subtracted, as is appropriate to each allocation category. That is, for tax base sharing purposes, 100 percent of the employees or 100

percent of the students means all of the employees or students who live in affected local government units. This is illustrated in the example below:

> Example: The plan identifies County A and Town A as the only affected county and municipality. The report specifies that there are 120 employees at the mineral development. It also shows that 7 employees live in County B, which is not identified in the plan as an affected local government unit.
>
> Subtract the 7 employees who do not live in an affected local government unit from the total 120 employees, to arrive at the number of employees living within affected local government units; that is, 113 employees. In the County-Municipality allocation category, the adjusted total for tax base sharing purposes is 113 Mineral Development Residing Employees.

A similar adjustment may have to be made for the high school district allocation category and again for the elementary district allocation category to arrive at the total number of Mineral Development Residing Students in each category of affected school districts.

Use the adjusted totals in calculating the percentage of employees or students who live in each affected local government unit within each of the three allocation categories.

VII. Calculating the Percentage of Employees or Students Residing in Each Affected Local Government Unit in Each Allocation Category:

The Tax Base Sharing Act may require three allocations of the increase in taxable valuation, that is, a separate allocation in each of three categories: (a) counties and municipalities; (b) high school districts; and (c) elementary school districts. Within each allocation category, the percentage of increased taxable valuation allocated to an affected local government unit is based on the percentage of employees or students residing in that affected local government unit.

From the employee place-of-residence report filed by the developer on or before May 1 of each year the county assessor should:

(a) adjust the total number of employees or students in each allocation category to include only those living in affected local government units (as shown above);

(b) calculate the percentage of employees or students living in each affected local government unit within each allocation category, as follows:

Example:

Local Government Units by Allocation Category	Total Mineral Development Residing Employees		Residing Students	
1) by County-Municipality	Number	Percent	Number	Percent
County	214	90%		
Municipality	24	10%		
County Total	238	100%		
2) by High School District				
HIS. District # 1			7	15%
HIS. District # 2			39	85%
High School Total			46	100%
3) by Elementary District				
Elem. District # 3			13	11%
Elem. District # 4			58	51%
Elem. District # 5			19	17%
Elem. District # 6			24	21%
Elementary Total			114	100%

VIII. Adjustments to County-Municipality Allocation Percentages:

Although Stillwater County did not have to deal with this issue, more than 20 percent of the Mineral Development Employees might live in one or more municipalities. When this is the case, further adjustment is necessary because by statute no more than 20 percent of the increase in taxable valuation may be allocated to all municipalities combined.

Therefore, even if the number of employees residing in municipalities represents, for example, 40 percent of the total Mineral Development Employees, no more than 20 percent of the taxable valuation is to be allocated to municipalities. The percentage of taxable valuation to be allocated to each municipality can be calculated by determining what percentage of the total municipal employee population resides in each municipality and multiplying that percentage by 20 percent.

Example:

Allocation Category: County-Municipality	Mineral Development Residing Employees Number	Unadjusted Percentage	
County A	120	60%	
Municipality A-1	30	15%	EXCEEDS 20% MAXIMUM
Municipality A-2	50	25%	FOR MUNICIPALITIES
County Total	200	100%	

Percentage Adjusted for 20% Maximum Allocation to Municipalities

Adjustment:

Municipality A-1	30	30 ÷ 80 =	38% x 20% =	7.6%
Municipality A-2	50	50 ÷ 80 =	62% x 20% =	12.4%
Municipal Total	80		100% of	20.0%

Adjusted Percentage to Apply to Increase in Taxable Valuation:

County A	110	80.0%	
Municipality A-1	30	7.6%	= 20%
Municipality A-2	50	12.4%	
County Total	200	100 %	of increase

IX. Adjustments for Taxable Valuation Differences among School Districts:

Usually each high school district contains one or more elementary districts within its boundaries and the taxable value of the high school district equals the total taxable values of the elementary districts.

In the Stillwater example, the mine is located in Elementary District 6 and in High School District 2. Therefore, the base taxable valuation stays with those districts. High School District 2 includes Elementary Districts 4, 5 and 6. High School District 2 is entitled to 21% of the increase in taxable valuation plus the base amount. Elementary Districts 4, 5 and 6 are entitled to a total of 89% of the increase in taxable valuation; District 6 is also entitled to the base taxable valuation. This means that the high school district valuation does not equal the combined valuations of the elementary districts it encompasses, as would ordinarily be the case.

To ensure that the total valuation is correct for the mineral development (and not counted twice) and that each school district applies its mill levy only to the percentage of taxable valuation allocated to that district, plus the base valuation where appropriate, Stillwater County has created "paper" school districts. Each "paper" district reflects only the allocated taxable valuation of the mineral development, the base valuation where appropriate, and the mill levy for the corresponding "real" district. The mine-only valuation of each "paper" district added to the non-mine valuation of the corresponding "real" district represents the total tax base of the school district.

Example:

School Districts	Mill Levy	Taxable Valuation
H.S.#1	45.98	All property in district
H.S.#1-Mine Only	45.98	15% of increase in mine taxable value
H.S.#2	36.79	All property in district, except mine
H.S.#2-Mine Only	36.79	85% of increase in mine taxable value plus base taxable valuation
E.S.#3	42.68	All property in district
E.S.#3-Mine Only	42.68	11% of increase in mine taxable value
E.S.#4	31.24	All property in district
E.S.#4-Mine Only	31.24	51% of increase in mine taxable value
E.S.#5	6.55	All property in district
E.S.#5-Mine Only	6.55	17% of increase in mine taxable value
E.S.#6	29.12	All property in district, except mine
E.S.#6-Mine Only	29.12	21% of increase in mine taxable value plus base taxable valuation

X. Adjustment to Maintain Constant Base Taxable Valuation and Achieve an Accurate Allocation of the Increase in Taxable Valuation:

Because taxable valuation is assessed by class and code for each individual taxpayer and because individual taxable valuations will vary from year to year, it is possible that within certain classes and codes, the valuation will decrease rather than increase in a given year. However, the Act requires the total base taxable valuation to remain constant for the jurisdictions in which the mine is located. Therefore, further calculation is needed in order to offset any decreases in valuation in individual classes and codes and maintain a constant total base taxable valuation.

The purpose of this calculation is to determine for each individual taxpayer and for each affected local government unit, by class and code of property, the base amount of taxable valuation that remains with the jurisdictions in which the mine is located, the increase in taxable valuation that is to be allocated, and the percentage and amount of the allocation to each affected local government unit.

To ensure that the base taxable valuation remains constant and to facilitate the application of mill levies, the following formula takes the calculation one step further and establishes for each local government unit the percentage and amount of the **total** taxable valuation of the mineral development against which each taxing jurisdiction may apply its mill levy. For each taxpayer the appropriate percentage is applied by class and code to property that is part of the mineral development to arrive (for each taxable property) at the amount of taxable valuation which is subject to the application of mill levies by each affected local government unit. The formula takes into account a constant base taxable valuation for the jurisdictions in which the mine is

located, the place-of-residence percentage shown above, and the actual increase in taxable valuation in excess of the total base amount.

A. To arrive at the Total **Increase** in Taxable Valuation of the Mineral Development:

Current Year **Total Taxable** Valuation of Mineral Development
- **Base Year Taxable** Valuation of Mineral Development
Total **Increase in Taxable** Valuation of Mineral Development

Example:

2,000,000	Current Year **Total Taxable** Valuation
- 500,000	**Base Year Taxable** Valuation
1,500,000	**Increase in Taxable** Valuation

B. The increase in taxable valuation is allocated three times, once in each allocation category. As shown in the Stillwater County example, the allocation occurs: (a) between one county and one municipality; (b) between two high school districts; and (c) among four elementary school districts, according to percentages based on the place-of-residence of employees and students:

(a) County-Municipality

County	90%
Municipality	10%
	100% of the increase in taxable valuation

(b) High school Districts

H.S. District #1	15%
H.S. District #2	85%
	100% of the increase in taxable valuation

(c) Elementary Districts

Elem. District #3	11%
Elem. District #4	51%
Elem. District #5	17%
Elem. District #6	21%
	100% of the increase in taxable valuation

The Stillwater **place-of-residence percentages** will be used in the following examples.

C. Each taxing jurisdiction applies its own mill levy to its share of the increase in taxable valuation. Each jurisdiction in which the mine is located also applies its mill levy against the base year taxable valuation, which remains constant and is not allocated. Taking this into account, the following formula calculates the percentage of total taxable valuation belonging to each affected local government unit.

Within each allocation category, make the following calculations to determine the percentage of total taxable valuation of the mineral development to be allocated to each affected local government unit from the taxable valuation of property belonging to each mineral development taxpayer:

1) For each local government unit in which the mine **is not** located:

a) Multiply:

	Example: H.S. District # 1
Increase in Taxable Valuation	1,500,000
x Place-of-Residence Percentage	x 15%
Allocated Taxable Valuation	225,000

b) Divide:

Allocated Taxable Valuation - Current **Total Taxable** Valuation = **Percentage** of Current **Total Taxable** Valuation to which the local government unit may apply its mill levy.

225,000 ÷ 2,000,000 = .1125 or 11.25%

2) For each local government unit in which the mine **is** located:

a) Multiply:

	Example: H.S. District # 2
Increase in Taxable Valuation	1,500,000
x Place-of-Residence Percentage	x 85%
Allocated Taxable Valuation	1,275,000

b) Add:

Allocated Taxable Valuation	1,275,000
+ **Base Taxable** Valuation	+ 500,000
Combined Taxable Valuation	1,775,000

c) Divide:

Combined Taxable Valuation - **Total Taxable** Valuation = **Percentage** of Current **Total Taxable** Valuation to which the local government unit may apply its mill levy

1,775,000 ÷ 2,000,000 = .8875 or 88.75%

EXAMPLE: Following are the calculations shown above, for local governments in each allocation category:

1. County-Municipality

Municipality:
a) 1,500,000 x 10% = 150,000
b) 150,000 ÷ 2,000,000 = .075 or 7.5%

County:
a) 1,500,000 x 90% = 1,350,000
b) 1,350,000 + 500,000 (base) = 1,850,000
c) 1,850,000 ÷ 2,000,000 = .925 or 92.5%

2. High School Districts

H.S. District # 1:
a) 1,500,000 x 15% = 225,000
b) 225,000 ÷ 2,000,000 = .1125 or 11.25%

H.S. District # 2:
a) 1,500,000 x 85% = 1,275,000
b) 1,275,000 + 500,000 (base) = 1,775,000
c) 1,775,000 ÷ 2,000,000 = .8875 or 88.75%%

3. Elementary School Districts

E.S. District # 3:
a) 1,500,000 x 11% = 165,000
b) 165,000 ÷ 2,000,000 = .0825 or 8.25%%

E.S. District # 4:
a) 1,500,000 x 51% = 765,000
b) 765,000 ÷ 2,000,000 = .3825 or 38.25%%

E.S. District # 5:
a) 1,500,000 x 17% = 255,000
b) 255,000 ÷ 2,000,000 = .1275 or 12.75%

E.S. District # 6:
a) 1,500,000 x 21% = 315,000
b) 315,000 + 500,000 (base) = 815,000
c) 815,000 ÷ 2,000,000 = .4075 or 40.75%

D. As shown above, the total amount of mineral development taxable valuation added to the tax base of each local government unit is:

Municipality:	150,000	
County:	1,850,000	(including base)
TOTAL	2,000,000	

H.S. District # 1:	225,000	
H.S. District # 2:	1,775,000	(including base)
TOTAL	2,000,000	

Elem. District # 3:	165,000	
Elem. District # 4:	765,000	
Elem. District # 5:	255,000	
Elem. District # 6:	815,000	(including base)
TOTAL	2,000,000	

E. However, the allocation process is not yet complete. The county assessor must complete a series of more detailed calculations, as outlined below, to make adjustments for variations within classes and codes in order to hold the overall base valuation constant; to provide individual taxpayers, as required for assessment and tax notices, with the market value and the taxable value of each property taxable in each local government unit; and to comply with procedural and record-keeping requirements. For each taxable mineral development property, the county assessor must calculate by class and code the amount of market value and of taxable value allocated to each local government unit.

The amount of mineral development taxable valuation added to the tax base of each local government unit, as shown above, should be the same as the amount arrived at by carrying out the calculations by class and code, as shown below:

1. Determine **by class and code** for each taxable property within the mineral development, the **amount** of **market value** allocated to each local government unit:

   a) Multiply:

   Market Value of Taxpayer's Property (by class and code)
   x **Percentage of Total Taxable Value** (by Local Government Unit)
   Amount of Market Value Allocated
   to the Local Government Unit (including base if appropriate)

   Example:

   A mineral development property is classified as Class 4 property. Its **market value** is appraised at 16,200. The taxable value of the property will be determined by applying Code 3817 to the appraised/market value.

   For each affected local government unit, multiply the **market value** of this Class 4 property times the **percentage of total taxable valuation** to which the local government is entitled. The result is the amount of **market value allocated by class and code** for that specific property to each local government unit:

Municipality:	16,200 x .075 =	1,215
County:	16,200 x .925 =	14,985
TOTAL		16,200
H.S. District # 1:	16,200 x .1125 =	1,823
H.S. District # 2:	16,200 x .8875 =	14,377
TOTAL		16,200
Elem. District # 3:	16,200 x .0825 =	1,336
Elem. District # 4:	16,200 x .3825 =	6,196
Elem. District # 5:	16,200 x .1275 =	2,066
Elem. District # 6:	16,200 x .4075 =	6,602
TOTAL		16,200

2. To determine the amount of **taxable value allocated** to the local government unit (which will include base taxable valuation where appropriate), calculate the taxable value of the allocated market value, as usual according to the class and code of the property.

   Repeat steps 1 and 2 for each item of taxable property that is part of the mineral development. The market and taxable values will appear 3 times, because 100 percent of the value is allocated in each of three separate allocations: to the County and affected Municipality, to the affected High School Districts, and to the affected Elementary School Districts.

3. To determine or verify the total amount taxable valuation that will be added to the tax base of each local government unit from the mineral development: for each local government unit add all valuations within each class and code, then add the totals of all classes and codes.

From the above calculations, the assessor and treasurer can determine the total taxable valuation to be allocated to each local government unit by class and code of property, by individual mineral development taxpayer, and by all mineral development taxpayers in the aggregate. The total taxable valuation of the taxpayer's property is not affected by the allocation process.

XI. Additional Assessment Procedures

A. Assessment notice: To achieve tax base sharing, the assessment process outlined above segregates the application of mill levies into three separate allocations of taxable valuation rather than applying each mill levy to the same taxable valuation. As a result, in the assessment notice the market and taxable valuations of each class and code of property will be appear at 300 percent of the true market and taxable valuations. The assessor must correct this apparent distortion on the assessment notice mailed to the taxpayer, by summarizing the market and taxable valuations and dividing the apparent valuations by three. This will show the true market and taxable values.

B. Recapitulation report: The assessor must establish new corresponding classes and codes for the recapitulation report. In each corresponding class and code divide the apparent taxable valuation by three to arrive at the true taxable valuation. Add the amount of taxable valuation in the corresponding class and code (mine only) to the amount in the original class and code (non-mine) to arrive at a total for that class and code of property.

Example:	(a) Existing (non-mine):	Class 4	Code 3817
	New Corresponding (mine only)	Class 84	Code 9817
	(b) Existing (non-mine):	Class 9	Code 6311
	New Corresponding (mine only)	Class 89	Code 9311

To recap, using example (a): divide by 3 the amount arrived at in Class 84 by Code 9817; add the result to the amount arrived at in existing Class 4 Code 3817. The sum is the actual total of Code 3817.

Repeat the process for all classes and codes.

SUMMARY

In conjunction with an impact plan, tax base sharing is intended to help meet the increased costs to local government units of services and facilities needed as a result of the mineral development.

Tax base sharing does not change the taxable valuation of the mineral development. Tax base sharing will mean that the taxpayers that comprise the mineral development will be paying taxes to a greater number of local government units, each of which will apply its own mill levy to its allocated share of the mineral development's taxable valuation. Because of differences in mill levies among the taxing jurisdictions, tax base sharing may increase the amount of tax paid by the mineral development.

Taxes are likely to be higher whenever taxable valuation is allocated to a municipality, because, except for the county road mill levy, property within an incorporated city or town is taxed by both the city and the county.

The approach outlined above meets the requirements of the Tax Base Sharing Act and the statutory, procedural and reporting requirements of the county assessor and the county treasurer.

MINERAL DEVELOPMENT EMPLOYEE PLACE-OF-RESIDENCE SURVEY

This survey is to be completed by each person employed by [mineral developer] or its contractors or subcontractors engaged in the construction or operation of the [mineral development].

The purpose of the survey is to comply with the requirements of section 90-6-405, MCA, of the Hard-Rock Mining Property Tax Base Sharing Act. The Act provides for the distribution of the taxable valuation of the mineral development among affected local government units in which employees and their school age children reside. As identified in the impact plan prepared by the mineral developer, an affected local government unit is one that expects to have increased costs as a result of the mineral development. One of the ways the mineral development helps to meet these increased costs is by apportioning its taxable valuation according to the percentage of employees and students residing in each affected local government unit.

Please sign and return the questionnaire to the [mineral developer] within 10 days.

1. Name of Employee: _____

2. Mailing Address: _____

3. Place of Residence: (The enclosed map will help you identify the school district in which you reside.)
   Elementary School District #: _____ Town (if any): _____
   High School District #: _____ County: _____

4. If you do not reside in the attached mapping area, please identify your place of residence by specifying the name of your landlord (if any), school districts, town (if any), and county: _____
   _____

5. Length of residence in this County: _____years _____months

6. School-Age Children of whom the employee is parent or guardian or who reside in the employee's household (please add an additional sheet, if necessary):

Student's Full Name	Grade	Name of School Attending	District #
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

CERTIFICATE OF PERSON SUBMITTING INFORMATION

I, the undersigned, certify that the above information is true and correct upon the signing and dating of this statement.

Date: _____ Signature: _____

PETITION TO AMEND AN APPROVED HARD-ROCK MINING IMPACT PLAN

Under certain circumstances the mineral developer or the governing body of an affected county may petition the Hard-Rock Mining Impact Board to amend an approved impact plan. The requirements and procedures for petitioning to amend a plan are provided in section 90-6-311, MCA.

Please note: the Act gives the governing body of an affected county the authority to file a petition to amend a plan on behalf of any affected local government unit within that county.

In your petition to amend an approved impact plan, please provide the following information:

1. DATE PETITION IS FILED (postmarked or hand delivered).

2. NAME OF MINERAL DEVELOPER.

3. COUNTY IN WHICH MINERAL DEVELOPMENT IS LOCATED.

4. NAME, ADDRESS, PHONE NUMBER AND SIGNATURE(S) OF EACH PETITIONER (county governing body and/or mineral developer).

5. A RESOLUTION DATED AND SIGNED BY THE GOVERNING BODY OF EACH LOCAL GOVERNMENT UNIT THAT REQUESTS THE AMENDMENT, AUTHORIZING THE COUNTY TO SUBMIT THE PETITION TO AMEND THE IMPACT PLAN.

6. LIST OF LOCAL GOVERNMENT UNITS BELIEVED BY THE PETITIONER(S) TO BE AFFECTED BY THE PROPOSED AMENDMENT.

7. As required by section 90-6-311(2), MCA, each petition must include the following information:

   (a) an explanation of the need for an amendment;

   (b) a statement of the facts and circumstances underlying the need for an amendment; and

   (c) a description of the corrective measures proposed by the petitioner.

8. In the approved impact plan, the developer commits to pay the increased capital and net operating costs resulting from the mineral development, as identified in the plan. Please indicate which identified costs and commitments in the approved plan will be changed as a result of the proposed amendment. Refer by number to the pages of the plan on which these matters are addressed.

9. If other provisions of the approved plan will also be affected by the proposed amendment, please also identify these provisions and the pages in the plan where they appear.

10. Section 90-6-311, MCA, specifies that a party to an approved impact plan may petition to amend the plan under any of the following circumstances. Please indicate which of the following circumstances provides the legal authority for filing this petition:

(1) The impact plan provides for amendments under definite conditions specified in the plan. Please refer to the specific pages in the plan which set forth the conditions under which the plan may be amended and describe those conditions:

If the authority to petition for the amendment is based on "definite conditions specified in the plan," the petitioner or the affected governing body, or both, should attest to the existence of the requisite conditions.

(2) Employment at the large-scale mineral development is forecast to increase or decrease by at least 75 persons, as determined under 90-6-302(4), over or under the employment levels contemplated by the approved impact plan.

(3) The approved impact plan is materially inaccurate because of errors in the assessment of impacts and less than two years have passed since the date the facility began commercial production.

Date the facility began commercial production: _____

(4) The governing body of an affected county and the mineral developer are joining in the petition to amend the impact plan.

In you have questions about what is required for filing a petition to amend an approved impact plan, please contact the administrative staff of the Hard-Rock Mining Impact Board:

Hard-Rock Mining Impact Board/DOC
Room C-211, Cogswell Building
Capitol Station
Helena, Montana 59620
(406) 444-3779

OBJECTION TO A PROPOSED AMENDMENT TO AN APPROVED HARD-ROCK MINING IMPACT PLAN

The objection to a proposed amendment must contain the information listed below and may contain additional information.

1. Name of hard-rock mining impact plan.

2. Name of local government unit or mineral developer that petitioned to amend the impact plan.

3. Name of local government unit or mineral developer filing the objection to the proposed amendment.

   Name, address and phone number of objector's authorized contact person.

4. Date objection is filed.

   (NOTE: Any party to the plan may file objections to a proposed amendment within 60 days after the Board publishes notice that it has received the petition to amend the plan. The review period begins the day after the day on which the notice is published and extends to the 60th day that is neither a holiday nor weekend.)

5. If you are objecting only to parts of the proposed amendment, specify what the objection includes.

6. Specify the reasons why the impact plan should not be amended as proposed.

File the objection with the Hard-Rock Mining Impact Board:

Hard-Rock Mining Impact Board/DOC
Cogswell Building Room C-211
Capitol Station
Helena, Montana 50620
(406) 444-3757

Refer also to 90-6-307, MCA; 90-6-311, MCA; ARM 8.104.203; and ARM 8.104.216.

APPENDICES XVI - XIX

RESERVED

APPLICATION FORM FOR GRANT OR LOAN
FROM THE HARD-ROCK MINING IMPACT TRUST ACCOUNT PROGRAM

An application for a grant or loan from the Hard-Rock Mining Impact Trust Account must contain the information listed below and may contain additional information.

(1) In applying to the Board for a grant or loan from the hard-rock mining impact trust account, the designated local government unit must provide the following information.

(a) Name of the applicant local government unit and the county in which it is located;
(b) Name of the affected mine and the county in which it is located;
(c) Description of the adverse fiscal or economic impact which has resulted or is expected to result from the cessation or reduction in mining-related activity;
(d) Description of the project or purpose for which the grant or loan is being requested;
(e) Description of how the proposed project or financial assistance will help to mitigate the adverse fiscal or economic impact of the cessation or reduction of mining-related activity;
(f) The amount of money being requested and whether the application is for a grant or loan;
(g) If the application is for a loan, the source of revenue from which the loan is to be repaid;
(h) The source and amount of other revenues or in-kind services, if any, expected to be used for the proposed project or purpose for which a grant or loan is being requested, and other documentation of the extent of local effort in meeting local needs;
(i) Citation of the statute which authorizes the applicant to provide or finance the service or facility for which a grant or loan is being requested;
(j) If the application is for a loan, citation of the statute which authorizes the applicant to incur indebtedness for the purpose for which the loan is being requested;
(k) A resolution signed by the affected local governing body certifying that it is submitting the application, that the purpose of the application is consistent with overall community planning, and that to the best of its knowledge the application contains accurate information; and
(l) Such other information as may be considered relevant by the applicant or as may be requested by the Board.

(2) Applications must be submitted to the administrative office no less than 60 days prior to Board consideration. Exceptions may be made at the Board's discretion for imminent threats to public health, safety and welfare.

File 10 copies of the application with the Hard-Rock Mining Impact Board.

Hard-Rock Mining Impact Board/DOC
Room C-211, Cogswell Building
Capitol Station
Helena, Montana 59620
(406) 444-3779

Refer also to 90-6-304 to 90-6-306, and 90-6-321 through 323, MCA; ARM 8.104.301 through 8.104.305.

REFERENCES

1. OVERVIEW OF HARD-ROCK MINING IMPACT ACT
   AND THE PROPERTY TAX BASE SHARING ACT

2. SUMMARY OF ROLES AND RESPONSIBILITIES

3. STATUTES: HARD-ROCK MINING IMPACT ACT
   HARD-ROCK MINING IMPACT PROPERTY TAX BASE SHARING
   EXCERPT: METAL MINE RECLAMATION ACT

4. ADMINISTRATIVE RULES

5. FORMAL STATEMENT OF POLICIES AND GUIDELINES

6. STATEMENT OF INTENT HOUSE BILL 472 (1983)

7. STATEMENT OF INTENT HOUSE BILL 645 (1987)

8. METALLIFEROUS MINES LICENSE TAX

II. PREPARATION OF AN IMPACT PLAN

The Act requires the mineral developer to prepare an impact plan identifying all increased capital, operating, and net operating costs which will be incurred by local government units as a result of the proposed mineral development. The developer must commit to pay all increased capital and net operating costs identified in the plan. These payments may be made in the form of prepaid taxes, grants, education impact bonds or other financing mechanisms that do not shift increased costs to the local taxpayer.

Local governments cooperate in the preparation of the impact plan, helping to assure that it meets statutory requirements and contains accurate data, reasonable assumptions, and adequate provisions for the mitigation of impacts. Affected local government units may require the developer to provide financial or other assistance to help local governments prepare for and evaluate the impact plan. Local government units must treat any such financial assistance as a tax prepayment by the developer.

III. REVIEW OF AN IMPACT PLAN

When the plan is complete, the developer submits it to the Board and to affected local government units for their review during a formal 90-day review period. During the review period, the governing body of the county must hold a public hearing on the proposed plan.

In reviewing a proposed plan local governments should ask the following questions:

(a) Is the plan based on accurate data and reasonable assumptions?
(b) Does the plan adequately identify all increased service and facility needs and costs likely to result from the mineral development?
(c) Has the developer committed to pay all increased capital and net operating costs in a timely manner and in a way that ensures these costs will not be shifted to other local taxpayers?
(d) Does the plan contain such provisions as may be needed for its implementation and amendment?
(e) Does the plan comply with all statutory and regulatory requirements of the Hard-Rock Mining Impact Act and the Property Tax Base Sharing Act?

During the formal review period, if the governing body of a local government unit disagrees with something in a proposed plan or concludes that an important element has been omitted from the plan, it may negotiate a mutually acceptable modification to the plan with the mineral developer, or it may file a formal objection with the Hard-Rock Mining Impact Board.

If a governing body files a formal objection and it and the developer cannot resolve their differences within 30 days after the end of the review period, the Hard-Rock Mining Impact Board holds a public hearing and adjudicates the dispute.

Only the governing body of an affected local government unit may file an objection to a plan or may enter into an agreement with the developer to change a plan after it has been submitted for review. Other local government officials and citizens participate in the review process through the governing body of the affected unit of local government. As defined in the Act, "local government units" include counties, incorporated towns and cities, elementary and high school districts, rural fire districts, public hospital districts, refuse disposal districts, and county water and sewer districts.

If no objections are filed during the formal review period or if all objections are resolved during the negotiation period, the plan is approved automatically. If objections are not resolved by the affected parties during the negotiation period, the Board will hold a public hearing in the most affected county and will adjudicate the disputed issues. After amending the plan as necessary to resolve the disputes, the Board will approve the plan.

IV. AMENDMENT OF AN APPROVED IMPACT PLAN

The developer and the governing body of the county may amend an approved impact plan at any time by filing a joint petition with the Board. In addition, either the developer or the governing body of the county, on behalf of any affected local government unit, may unilaterally file a petition to amend an approved plan, provided that (a) the petition is filed within two years of when the mine begins commercial production and the plan is materially inaccurate because of errors in assessing the impacts, (b) employment at the mine is forecast to increase or decrease by at least 75 persons over or under the number projected in the plan, or (c) pursuant to the plan itself, circumstances occur which trigger the amendment process.

A petition must include a statement of the facts and circumstances underlying the need for the amendment and a description of the proposed corrective measures. A proposed amendment is subject to a 60-day review period during which any party to the plan may file an objection to the amendment with the Board.

V. ENFORCEMENT OF THE DEVELOPER'S COMMITMENTS IN AN IMPACT PLAN

The mineral developer's compliance with its commitments in an approved impact plan is a condition of the operating permit issued to the developer by the Department of State Lands. If the developer fails to comply with its commitments in the plan, or with the review and implementation requirements of the Impact and Tax Base Sharing Acts, the Department must suspend the operating permit until such time as the developer meets its obligations under the plan and complies with the Acts.

VI. THE HARD-ROCK MINING PROPERTY TAX BASE SHARING ACT

Tax base sharing is required when an impact plan predicts that increased costs resulting from the development will exceed increased revenues in local government units where the mine is not located.

Every mine is located in at least one county, one high school district and one elementary school district. Without tax base sharing, each of these taxing jurisdictions applies its mill levy to 100% of the taxable valuation of the mine. With tax base sharing, each applies its mill levy to the valuation that existed before the operating permit was issued and to its allocated share of the subsequent increase in valuation.

Tax base sharing affects only the increase in taxable valuation of the mineral development which occurs after the operating permit is issued. Tax base sharing means that the increase in valuation will be allocated among all affected counties, municipalities and school districts, as identified in the plan and as defined by the Tax Base Sharing Act.

The allocation of taxable valuation is based on the number and place of residence of all mineral development employees and their school-age children.

Mineral development employees include all persons, both local and inmigrant, who are employed by the developer, its contractors and subcontractors, in the construction or operation of the mine and its associated milling facility.

Tax base sharing does not affect the total taxable valuation of the mineral development but may affect the amount of tax paid because of differences among the mill levies of the affected local government units.

VII. SOCIAL AND ECONOMIC IMPACTS AND THE HARD-ROCK MINING IMPACT ACT

The Hard-Rock Mining Impact Act and the Property Tax Base Sharing Act do not attempt to mitigate the full array of social and economic impacts resulting from the opening of a new large-scale hard-rock mine. They deal only with impacts to local government units. The purpose of the Acts is to enable local governments to provide the governmental services and facilities needed as a result of the new development and to ensure that the local taxpayer will not have to pay increased capital and net operating costs resulting from the development.

However, a broad range of social and economic impacts must be assessed in order to identify the need for local government services and facilities. For example, in order to identify the local government units that will provide governmental services and facilities to inmigrating persons, the plan must project both the number of people who will move into the area as a result of the development and where they will live. To do this, the impact plan must identify the housing needs that will result from the mineral development and where and how these needs can be met with existing or new housing.

The developer and some local government units can influence the location of new housing. The developer may choose to help mitigate nongovernmental impacts, such as housing, in order to help meet the needs of its employees, to minimize increased demands on local government services and facilities, or to reduce other social and economic impacts. Such decisions by the developer affect the impact plan but are not required by the Impact Act.

VIII. SOCIAL AND ECONOMIC IMPACTS AND THE HARD-ROCK MINE OPERATING PERMIT

If an environmental impact statement (EIS) is prepared by the Department of State Lands for a proposed new mine, the EIS must assess a broad range of potential social and economic impacts. Its data and projections are to be made available to local government units to help them with the preparation and review of an impact plan. The EIS may recommend specific measures for mitigating adverse social and economic impacts. In addition, based on a recent court decision, if the EIS identifies a social or economic impact which might be mitigated by the developer, the Department may impose conditions on the operating permit that require the developer to undertake specific impact mitigation measures, although this is not typically done.

*****

The Impact Act and Tax Base Sharing Act are found in Sections 90-6-301 through 90-6-405, MCA. Questions about the Acts may be directed to the Hard-Rock Mining Impact Board, Department of Commerce, Capitol Station, Helena, Montana 59620; (406) 444-3779. 2/19/88

HARD-ROCK MINING IMPACT ACT: STATEMENT OF ROLES AND RESPONSIBILITIES

The **developer** (a) prepares the impact plan in cooperation with the affected local government units and attempts to negotiate resolution of disputes; (b) guarantees compliance with its commitments in the approved plan and provides a financial guarantee as required; (c) pays all increased capital and net operating cost for local government services and facilities needed as a result of the mineral development, as identified in the plan; and (d) provides such information as may be required by statute or rule or by the plan itself.

Affected **local government units** assist with the preparation of the impact plan, review the submitted document and negotiate modifications or file formal objections, as appropriate. Pursuant to the impact plan, local government units provide the additional services and facilities for which the developer makes impact payments and, in time, provide tax credits for prepaid taxes.

Both the **developer** and the **local government units** are bound by statutory and regulatory requirements concerning (a) the submission and review of an impact plan, (b) changing the plan after it has been submitted for review, and (c) implementing and amending the approved plan. During the impact plan process, the most affected **county** performs a number of "lead agency" functions on behalf of all affected local government units.

The **public** is entitled to participate in its preparation and review of the impact plan through its communication with the governing bodies of affected local government units. In addition, the Impact Act requires the governing body of the affected county to hold a public hearing on the proposed impact plan during the formal 90-day review period.

The **Hard-Rock Mining Impact Board** is a quasi-judicial board responsible for administering the Impact Act. The Board (a) clarifies the processes and procedures by which the Act is implemented and adopts administrative rules as necessary; (b) resolves formal objections to the proposed plan or plan amendment; (c) performs administrative functions related to the review, guarantee, implementation and amendment of an impact plan; (d) grants, denies or repeals waivers of the impact plan requirement for certain large-scale mine permittees and specifies the terms of conditional waivers; and (e) notifies the Department of State Lands if the developer fails to comply with an approved plan or with the requirements of the Impact or Tax Base Sharing Acts.

The companion Tax Base Sharing Act may require the **Department of Revenue** to allocate the increase in taxable valuation of the mineral development that occurs after the operating permit is issued. Valuation is allocated among counties, municipalities and school districts in which the mine is located or which experience an increase in costs in excess of increased revenues resulting from the mineral development, as identified in the approved plan.

The **Board** also administers the Hard-Rock Mining Impact Trust Account grant and loan program for mitigation of adverse fiscal and economic impacts resulting from the 50 percent reduction in workforce or closure of a hard-rock mine.

Please address questions to the Hard-Rock Mining Impact Board/DOC, Cogswell Building C-211, Capitol Station, Helena, MT 59620; (406)444-3779. 2/19/88

Part 3

Hard-Rock Mining Impact

Part Cross-References

Duty to notify weed management district when proposed project will disturb land, 7-22-2152.

Disposition of metalliferous mines license tax, 15-37-117.

Mining generally, Title 82, ch. 2.

Reclamation, Title 82, ch. 4.

90-6-301. Declaration of necessity and purpose. The large-scale development of mineral deposits in the state may cause an influx of people directly related to the area of the development. This influx of people and the corresponding increase in demand for local government facilities and services may create a burden on the local taxpayer. There is a significant lag time between the time when additional facilities and services must be provided and the time when additional tax revenue is available as a result of the increased tax base. In addition, local government units in whatever jurisdiction the development is not located may receive substantial adverse economic impacts without benefit of a major increased tax base in the future. There is therefore a need to provide a system to assist local government units in meeting the initial financial impact of large-scale mineral development.

History: En. Sec. 2, Ch. 617, L. 1981; amd. Sec. 2, Ch. 311, L. 1987.

Compiler's Comments

1987 Amendment In first sentence, after "state", substituted "may cause an influx of people directly related to the area of the development" for "causes an influx of people into the area of the development many times larger than the number of people directly involved in the mining operation"; and in second sentence, after "services", substituted "may create" for "creates".

Cross-References

Estimate of economic impact, 2-4-405.

Montana Environmental Policy Act, Title 75, ch. 1.

Montana Major Facility Siting Act, Title 75, ch. 20.

90-6-302. Definitions. In this part the following definitions apply:

(1) "Board" means the hard-rock mining impact board established in 2-15-1822.

(2) "Bonds" include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness or evidencing or representing the borrowing of money or evidencing or representing a charge, lien, or encumbrance on specific revenues, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.

(3) "Local government unit" means a county, city, town, school district, or any of the following independent special districts:

(a) rural fire district;

(b) public hospital district;

(c) refuse disposal district;

(d) county water and sewer district;

(e) county water district; or

(f) county sewer district.

(4) "Large-scale mineral development" means the construction or operation of a hard-rock mine and the associated milling facility for which a permit is applied for under 82-4-335 on or after May 18, 1981, and for which the average number of persons on the payroll of the mineral developer and of contractors at the mineral development exceeds or is projected to exceed 75 for any consecutive 6-month period. A mining operation that would qualify as a large-scale mineral development under this subsection is not a large-scale mineral development if the mine owner and operator are small miners as defined in 82-4-303.

History: En. Sec. 3, Ch. 617, L. 1981; amd. Sec. 8, Ch. 453, L. 1985; amd. Sec. 4, Ch. 582, L. 1985.

90-6-303. Chairman — meetings — facilities — funding. (1) The board shall elect a chairman from among its members.

(2) The board shall meet as necessary or as called by the chairman or a majority of the members.

(3) The board is allocated to the department of commerce for administrative purposes only as provided in 2-15-121.

(4) The administrative and operating expenses of the board shall be paid from revenue deposited to the credit of the hard-rock mining impact trust account from the license tax on metal mines imposed under Title 15, chapter 37.

History: En. Sec. 4, Ch. 617, L. 1981; amd. Sec. 7, Ch. 619, L. 1983.

90-6-304. Accounts established. (1) There is within the state special revenue fund a hard-rock mining impact account. Moneys are payable into this account from payments made by a mining developer in compliance with the written guarantee from the developer to meet the increased costs of public services and facilities as specified in the impact plan provided for in 90-6-307. The state treasurer shall draw warrants from this account upon order of the hard-rock mining impact board.

(2) There is within the state special revenue fund a hard-rock mining impact trust account. Money is payable into this account under the provisions of 15-37-117. After deducting the administrative and operating expenses of the board as provided in 90-6-303, money must be segregated within the account by county of origin. The state treasurer shall draw warrants from this account upon order of the hard-rock mining impact board.

History: En. Sec. 5, Ch. 617, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 8, Ch. 619, L. 1983.

Cross-References

Fund structure, 17-2-102.

Warrants, Title 17, ch. 8, part 3.

Hard-rock mining account, 82-4-311.

90-6-305. Hard-rock mining impact board — general powers. (1) The board may:

(a) retain professional staff, consultants, and advisors notwithstanding the provisions of 2-15-121;

(b) adopt rules governing its proceedings, determinations, and administration of this part;

(c) award grants to local government units subject to 90-6-306;

(d) award grants or loans to local government units from money paid into the hard-rock mining impact trust account subject to the provisions of 90-6-321 and 90-6-322;

(e) make payments to local government units from money paid to the hard-rock mining impact account as provided in 90-6-307;

(f) make determinations as provided in 90-6-307, 90-6-321, and 90-6-322; and

(g) accept grants and other funds to be used in carrying out this part.

(2) The provisions of the Montana Administrative Procedure Act apply to the proceedings and determinations of the board.

History: En. Sec. 6, Ch. 617, L. 1981; amd. Sec. 2, Ch. 489, L. 1983; amd. Sec. 9, Ch. 619, L. 1983.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Adoption and publication of rules, Title 2, ch. 4, part 3.

90-6-306. Basis for awarding grants. Grants, including those from the hard-rock mining impact trust account, shall be awarded to local government units on the basis of:

(1) need;

(2) severity of impact from mineral development;

(3) availability of funds; and

(4) extent of local effort in meeting its needs.

History: En. Sec. 7, Ch. 617, L. 1981; amd. Sec. 10, Ch. 619, L. 1983.

90-6-307. Impact plan to be submitted. (1) After an application for a permit for a large-scale mineral development is made under 82-4-335, the person seeking the permit shall submit to the affected counties and the board an impact plan describing the economic impact the large-scale mineral development will have on local government units and shall file proof of such submission to the counties with the board. Whenever an environmental impact statement on the permit application is prepared under 75-1-201, the lead agency shall cooperate to the fullest extent practicable with the affected local government units to eliminate duplication of effort in data collection. The governing bodies of the affected counties shall publish notice of the submission of an impact plan at least once in a newspaper of general circulation in the county. The mineral developer and the affected local government units shall ensure that the impact plan includes:

(a) a timetable for development, including the opening date of the development and the estimated closing date;

(b) the estimated number of persons coming into the impacted area as a result of the development;

(c) the increased capital and operating cost to local government units for providing services which can be expected as a result of the development;

(d) the financial or other assistance the developer will give to local government units to meet the increased need for services.

(2) In the impact plan, the developer shall commit itself to pay all of the increased capital and net operating cost to local government units that will be a result of the development, as identified in the impact plan, either from tax prepayments, as provided in 90-6-309, special industrial educational impact bonds, as provided in 90-6-310, or other funds obtained from the developer, and shall provide a time schedule within which it will do so. The plan may provide for funding from other revenue sources or funding mechanisms if the developer guarantees that the amount to be provided from these sources will be paid.

(3) Upon request of the governing body of an affected unit of local government, the mineral developer, prior to the end of the 90-day review period, shall provide financial or other assistance as necessary to prepare for and evaluate the impact plan. The governing body of the affected county must contract with the developer to obtain the requested financial assistance for each unit of local government within the county. Any disbursements to a unit of local government under this subsection shall be credited against future tax liabilities, if any.

(4) The governing body of the county where the fiscal impacts on local government units are forecasted in the impact plan to be most costly shall, within 90 days after receipt of the impact plan from the developer, conduct a public hearing on the impact plan.

(5) An affected local government unit that has not been identified in an impact plan submitted to the board as being likely to experience increased capital and operating costs for providing services which can be expected as a result of the development may object to the impact plan under the provisions of this section if the local government unit clearly demonstrates that it is likely to experience increased capital and operating costs from the mineral development.

(6) An affected local government unit shall, within 90 days after receipt of the impact plan from the developer, notify the board in writing if that local government unit objects to the impact plan, specifying the reasons why the impact plan is objected to. During the 90-day period, an affected local government unit may petition for one 30-day extension by submitting a written request to the board stating the need and justification for the extension. The board shall grant the extension unless it finds there is no reasonable basis for the request. If no objection is received within the 90-day period or any extension thereof, the impact plan is approved without any review by the board. An approved plan is binding and may only be altered under the amendment provisions of 90-6-311.

(7) If objections are received from a local government unit, the board shall, within 10 days, notify the developer and forward a copy of the local government unit's objections to the developer. The local government unit and the developer have 30 days, or a longer period if both the local government unit and the developer request an extension, to resolve the objection. If the objections are not resolved, the board shall conduct a hearing on the validity of the objections, which shall be held in the affected county or, if objections are received from local government units in more than one county, shall be held in the county which, in the board's judgment, is more greatly affected. The provisions of the Montana Administrative Procedure Act shall apply to the conduct of the hearing. The impact plan filed by the developer shall carry no presumption of correctness at the hearing.

(8) Following the hearing, the board shall, within 60 days, make findings as to those portions of the impact plan which were objected to and, if appropriate, amend the impact plan accordingly. The findings and impact plan, as amended, shall be served by the board upon all parties. Any local government unit or the developer, if aggrieved by the decision of the board, is entitled to judicial review, as provided by Title 2, chapter 4, part 7, in the district court in and for the judicial district in which the hearing was held.

(9) The developer shall, within 30 days of receipt of the approved impact plan, provide the board with a written guarantee that the developer will meet the increased costs of public services and facilities as specified in the approved impact plan and according to the time schedule contained in the approved impact plan.

(10) The developer may make payments as specified in the approved impact plan directly to a local government unit or to the board. The governing body of a local government unit receiving payments shall deposit the payments into an impact fund. The developer and the affected governing body shall each issue to the board written verification of each payment and its intended use in compliance with the impact plan. The board shall deposit payments received from a developer into the hard-rock mining impact account established by 90-6-304.

(11) The board shall notify the department of state lands of its receipt of the written guarantee of payment and of any failure of the developer to comply with this section.

(12) Upon receipt of evidence that an affected local government unit identified in the approved impact plan is providing or is preparing to provide an additional service or facility provided for in the approved impact plan, the board shall, if the hard-rock mining impact account is used to deliver payments to the local government unit, pay to that local government unit, in one sum or in parts, the money from the hard-rock mining impact account identified in the plan as the increased cost to the local government unit of providing that public service or facility.

(13) If it is determined that an objection filed by an affected local government unit under subsections (5) and (6) or 90-6-311(3) is valid and it results in some remedial order by the board or court of competent jurisdiction, the local government unit shall be awarded and the developer shall pay reasonable costs and attorney fees associated with any administrative or judicial appeals filed under this section. Any attorney fees and costs awarded shall be in addition to any amounts paid by the developer under this part.

(14) Upon a determination by the department of state lands that a permittee under 82-4-335 has become or will become a large-scale mineral developer, the permittee may petition the board for a waiver of the impact plan requirement. The board may grant a waiver or conditional waiver of this requirement only if it has provided notice and opportunity for hearing to the permittee and to all affected local government units. The board shall adopt criteria under which a waiver may be granted. A waiver issued by the board may be revoked as provided in the conditional waiver or if the permittee and contractors at the mineral development increase their payrolls from the date of the waiver by 75 or more persons, provided the revocation is requested by an affected local government unit and notice and opportunity for hearing are given to the permittee and all affected local government units. The board shall notify the board of land commissioners of any waiver that has been revoked.

(15) When a person who holds an operating permit under 82-4-335 and who has filed an impact plan fails to comply with the review and implementation requirements in this part and part 4 of this chapter, the board shall certify to the board of land commissioners that the failure to comply has occurred and shall certify when a permittee who has previously failed to comply comes into compliance.

History: En. Sec. 8, Ch. 617, L. 1981; amd. Sec. 3, Ch. 489, L. 1983; amd. Sec. 4, Ch. 24, L. 1985; amd. Sec. 5, Ch. 582, L. 1985; amd. Sec. 3, Ch. 311, L. 1987.

Compiler's Comments

1987 Amendment In (1), at end of introductory material, substituted reference to the mineral developer and the affected local government units ensuring contents of impact plan for "The impact plan shall include"; inserted (4) and (5); in (6), in fourth sentence, substituted "the impact plan is approved without any review by the board" for "the impact plan shall be approved by the board" and inserted last sentence; and in (13) substituted "subsections (5) and (6)" for "subsection (4)".

Cross-References

Notice — actual and constructive, 1-1-217.

Requirements for compliance with notice provisions, 2-3-104.

Hearing — rules of evidence, cross-examination, judicial notice, 2-4-612.

Local government — general provisions related to services, Title 7, ch. 11.

Local government — utility services, Title 7, ch. 13.

Local government — culture, social services, and recreation, Title 7, ch. 16.

Local government — general emergency and protective services, Title 7, ch. 31.

Allowable costs, Title 25, ch. 10, part 2.

Attorneys' fees, Title 25, ch. 10, part 3.

90-6-308. Permit procedure and review of impact plan to run concurrently. It is intended that the procedure for fulfilling the permit requirement of 82-4-335 and the review of the impact plan by the board under 90-6-307(5) and (6), if review occurs, are to run concurrently.

History: En. Sec. 9, Ch. 617, L. 1981; amd. Sec. 4, Ch. 311, L. 1987.

Compiler's Comments

1987 Amendment At end of section substituted "under 90-6-307(5) and (6), if review occurs" for "under 90-6-307".

90-6-309. Tax prepayment — large-scale mineral development. (1) After permission to commence operation is granted by the appropriate governmental agency, and upon request of the governing body of a county in which a facility is to be located, a person intending to construct or locate a large-scale mineral development in this state shall prepay property taxes as specified in the impact plan. This prepayment shall exclude the 6-mill university levy and may exclude the mandatory county levy for the school foundation program of 45 mills.

(2) The person who is to prepay under this section shall not be obligated to prepay the entire amount established in subsection (1) at one time. Upon request of the governing body of an affected local government unit, the person shall prepay the amount shown to be needed from time to time as determined by the board.

(3) The person who is to prepay shall guarantee to the hard-rock mining impact board, through an appropriate financial institution, as may be required by the board, that property tax prepayments will be paid as needed for expenditures created by the impacts of the large-scale mineral development.

(4) When the mineral development facilities are completed and assessed by the department of revenue, they shall be subject during the first 3 years and thereafter to taxation as all other property similarly situated, except that in each year after the start of production, the local government unit that received a property tax prepayment shall provide for repayment of prepaid property taxes in accordance with subsection (5).

(5) A local government unit that received all or a portion of the property tax prepayment under this section shall provide for tax crediting as specified in the impact plan. The tax credit allowed in any year may not, however, exceed the tax obligation of the developer for that year, and the time period for tax crediting is limited to the productive life of the mining operation.

History: En. Sec. 10, Ch. 617, L. 1981; amd. Sec. 4, Ch. 489, L. 1983; amd. Sec. 6, Ch. 582, L. 1985.

Cross-References

Property tax levies, Title 15, ch. 10.

Tax prepayment — new industrial facilities, 15-16-201.

90-6-310. Education impact bonds. (1) When the need for new school facilities is determined, the owners of a large-scale mineral development may enter into a written agreement with the trustees of a school district that has the burden for the issuance of bonds to cover the cost of such new construction. The trustees of a school district may execute a written agreement with the owner of a large-scale mineral development for the issuance of any special industrial educational impact bonds provided for in this section.

(2) The agreement with the owners of a large-scale mineral development shall provide for a payment guarantee, in addition to the taxes imposed by the school district on property owners generally, of the principal and interest on the bonds provided for in this section. Payment will then be made by an annual special tax levy on the property of the large-scale mineral development sufficient to retire the principal and interest on these special impact bonds. The bonds shall not be an obligation of the trustees or the school district.

(3) The debt limits set forth in 20-9-406 and the provisions of 20-9-410 and 20-9-421 through 20-9-432, inclusive, do not apply to bonds issued in accordance with this section. The interest on such bonds shall not be subject to state taxes.

History: En. Sec. 11, Ch. 617, L. 1981.

Cross-References

Bond issues, Title 17, ch. 5.

Bond issues for certain purposes, 20-9-403.

Purpose and authorization of building reserve fund by an election, 20-9-502.

90-6-311. Impact plan amendments. (1) The impact plan may provide for amendment under definite conditions specified in the plan. Also, the governing body of an affected county or the mineral developer may petition the board for an amendment to an approved impact plan if:

(a) employment at the large-scale mineral development is forecast to increase or decrease by at least 75 persons, as determined under 90-6-302(4), over or under the employment levels contemplated by the approved impact plan; or

(b) it becomes apparent that an approved impact plan is materially inaccurate because of errors in assessment and 2 years have not elapsed since the date the facility begins commercial production; or

(c) the governing body of an affected county and the mineral developer join in a petition to amend the impact plan.

(2) Within 10 days of receipt the board shall publish notice of the petition at least once in a newspaper of general circulation in the affected county. The petition must include:

(a) an explanation of the need for an amendment;

(b) a statement of the facts and circumstances underlying the need for an amendment; and

(c) a description of the corrective measures proposed by the petitioner.

(3) Within 60 days after notice that the petition has been received, an affected local government unit or the mineral developer must notify the board in writing if such person objects to the amendments proposed by the petitioner, specifying the reasons why the impact plan should not be amended as proposed. If no objection is received within the 60-day period, the impact plan must be amended by the board as proposed by the petitioner.

(4) If an objection is received, within 10 days of its receipt, the board shall notify the petitioner and include a copy of all objections received by the board. If the objecting party and the petitioner cannot resolve the objections within 30 days after the expiration of the 60-day period, the board shall conduct a hearing on the validity of the objections within 30 days after the failure of the parties to resolve the objections. The hearing must be held in the affected county or, if objections are received from local government units in more than one county, must be held in the county which in the board's judgment is more greatly affected. The provisions of the Montana Administrative Procedure Act apply to the conduct of the hearing.

(5) Following the hearing, the board shall make findings as to those portions of the amendments which were objected to and, if appropriate, amend the impact plan accordingly. The board shall cause the findings and impact plan, as amended, to be served on all parties. Any local government unit or the developer is entitled to judicial review, as provided by Title 2, chapter 4, part 7, in the district court for the judicial district in which the hearing was held.

History: En. Sec. 5, Ch. 489, L. 1983; amd. Sec. 7, Ch. 582, L. 1985.

Cross-References

Notice and opportunity to be heard, Title 2, ch. 3, part 1.

Contested cases — informal hearings, 2-4-603.

Contested cases — hearing, 2-4-612.

90-6-312 through 90-6-320 reserved.

90-6-321. Basis for awarding grants and loans from the hard-rock mining impact trust account — restrictions. (1) Whenever the board determines that a mining operation has permanently ceased all mining-related activity or has experienced at least a 50% reduction in its full-time equivalent mining work force over the immediately preceding 5-year period, the board may in its discretion award grants and loans from the hard-rock mining impact trust account to an affected local government unit in accordance with subsection (2).

(2) The board may award grants and loans to assist a local government unit in efforts to:

(a) pay for outstanding capital project bonds or other expenses incurred at least 5 years prior to the end of mining activity or the reduction in a work force as specified in subsection (1);

(b) decrease unusually high property tax mill levies that are directly caused by the cessation or reduction of mining activity;

(c) promote diversification and development of the economic base within a local government unit;

(d) attract new industry to the impact area; and

(e) provide cash incentives for expanding the employment base of the impact area.

(3) Not more than 50% of the money available in the hard-rock mining impact trust account may be granted or loaned for the purpose of assisting local governments under (a) and (b) of subsection (2).

(4) The amount of money that is available to be granted or loaned to a local government unit within an impact area may not exceed the balance in

the hard-rock mining impact trust account credited to that area under the provisions of 90-6-304 and 90-6-322.

History: En. Sec. 2, Ch. 619, L. 1983.

90-6-322. Eligibility for grants and loans from county accounts — board rules. (1) The hard-rock mining impact trust account must be maintained on a county-by-county basis. Any local government unit in the state directly impacted by the cessation or reduction of mining-related activity may apply to the board for impact grants or loans from the account for the county in which such cessation or reduction occurred.

(2) The board shall determine to what degree a local government unit is directly impacted by a cessation or reduction in mining-related activity, and such determination is final. The board shall adopt rules that provide a procedure for designating local government units and areas impacted by the cessation or reduction of mining-related activity.

History: En. Sec. 3, Ch. 619, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

90-6-323. Local government budget authority. A local government unit may budget and expend payments received from a mineral developer under this part or part 4 of this chapter or pursuant to a plan approved under this part. If a payment is requested or received after the adoption of the budget for the fiscal year in which the payment is to be expended, the governing body of the local government unit may by a majority vote amend its budget to provide for the receipt and expenditure of the payment.

History: En. Sec. 8, Ch. 582, L. 1985.

Part 4

Hard-Rock Mining Impact Property Tax Base Sharing

Part Cross-References

Residence -- rules for determining, 1-1-215.
Property subject to taxation — classification, Title 15, ch. 6, part 1
Tax appraisal, Title 15, ch. 7, part 1
Tax assessment procedure, Title 15, ch. 8.
Tax equalization, Title 15, ch. 9, part 1
Statewide tax levies, Title 15, ch. 10, part 1
Mining license taxes, Title 15, ch. 37
Resource indemnity trust tax, Title 15, ch. 38

90-6-401. Declaration of necessity and purpose. The commencement of new large-scale hard-rock mineral developments often results in revenue disparities among adjacent local government units. This occurs primarily when a mine that locates in one taxing jurisdiction causes population influxes in neighboring jurisdictions. The result can be that some jurisdictions will experience a need to increase expenditures and receive no corresponding increase in revenue, while others will experience an increase in revenue and receive no comparable increase in expenditures. There is therefore a need to allocate the increase in property tax base resulting from the development and operation of new large-scale mines so that property tax revenues will be equitably distributed among affected local government units.

History: En. Sec. 1, Ch. 635, L. 1983.

90-6-402. Definitions. As used in this part, the following definitions apply:

(1) "Affected local government unit" means a local government unit that will experience a need to increase services or facilities as a result of the commencement of large-scale mineral development or within which a large-scale mineral development is located in accordance with an impact plan adopted pursuant to 90-6-307.

(2) "Board" means the hard-rock mining impact board established in 2-15-1822.

(a) A portion, not to exceed 20%, to affected municipalities, based on that percentage of the total number of mineral development employees that reside within municipal boundaries. The taxable valuation allocated to affected municipalities must be distributed to each municipality according to its percentage of the total number of mineral development employees who reside within municipal boundaries. That portion of the taxable valuation distributed to a municipality pursuant to this section is subject to the same county mill levy as other taxable properties located in the municipality.

(b) The remaining portion of the taxable valuation must be distributed to each affected county according to its percentage of the total number of mineral development employees that reside within the county.

(2) The total increase in taxable valuation must be distributed pro rata among each affected high school district according to the percentage of the total number of mineral development high school students that reside within each district.

(3) The total increase in taxable valuation must be distributed pro rata among each affected elementary school district according to the percentage of the total number of mineral development elementary school students that reside within each district.

History: En. Sec. 4, Ch. 635, L. 1983.

90-6-405. Employee surveys. (1) Each large-scale mineral development subject to the provisions of 90-6-403 and 90-6-404 shall, on or before May 1 of each year, conduct a survey of its employees and promptly submit a report of its findings to the department of revenue. The report must include:

(a) the number of mineral development employees residing within each affected county;

(b) the number of mineral development employees residing within each affected municipality;

(c) the number of mineral development students residing in each affected high school district; and

(d) the number of mineral development students residing in each affected elementary school district.

(2) The initial allocation of the increase in taxable valuation made as provided in 90-6-403 and 90-6-404 shall be made on the basis of the place of residence of employees and the district of enrollment of students as projected in the approved impact plan for that period of time between the issuance and validation of the permit and the submission of an employee survey as provided for in this section.

History: En. Sec. 5, Ch. 635, L. 1983.

(3) "Mineral development employee" means a person who resides within the jurisdiction of an affected local government unit as a result of employment with a large-scale mineral development or its contractors or subcontractors.

(4) "Mineral development student" means a student whose parent or guardian resides within the jurisdiction of an affected local government unit as a result of employment with a large-scale mineral development or its contractors or subcontractors.

(5) "Jurisdictional revenue disparity" means property tax revenues resulting from a large-scale hard-rock mineral development that are inequitably distributed among affected local government units as finally determined by the board in an approved impact plan.

(6) "Large-scale mineral development", for the purposes of this part, is defined in 90-6-302.

(7) "Local government unit", for the purposes of this part, means a county, municipality, or school district.

(8) "Taxable valuation" of a mineral development means the total of the gross proceeds taxable percentage specified in 15-6-132(2)(a) when added to the taxable percentages of real property, improvements, machinery, equipment, and other property classified under Title 15, chapter 6, part 1.

History: En. Sec. 2, Ch. 635, L. 1983.

90-6-403. Jurisdictional revenue disparity — conditioned exemption and reallocation of certain taxable valuation. (1) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the board shall promptly notify the developer, all affected local government units, and the department of revenue of the disparity. Except as provided in this section and 90-6-404, the increase in taxable valuation of the mineral development that occurs after the issuance and validation of a permit under 82-4-335 is not subject to the usual application of county and school district property tax mill levies. This increase in taxable valuation must be allocated to local government units as provided in 90-6-404. The increase in taxable valuation allocated as provided in 90-6-404 is subject to the application of property tax mill levies in the local government unit to which it is allocated.

(2) The total taxable valuation of a large-scale mineral development remains subject to the statewide mill levies and basic county levies for elementary and high school foundation programs as provided in 20-9-331 and 20-9-333.

(3) The provisions of subsection (1) remain in effect until the large-scale mineral development ceases operations or until the existence of the jurisdictional revenue disparity ceases, as determined by the board.

History: En. Sec. 3, Ch. 635, L. 1983; amd. Sec. 5, Ch. 311, L. 1987.

Compiler's Comments

1987 Amendment. In (1), near beginning of first sentence after "approved", deleted "by the board".

90-6-404. Allocation of taxable valuation for local taxation purposes. When property of a large-scale mineral development is subject to the provisions of 90-6-403, the increase in taxable valuation must be allocated by the department of revenue as follows:

(1) The total increase in taxable valuation of the mineral development must be allocated between affected counties and affected municipalities according to the following formula based on the place of residence of mineral development employees:

82-4-335. Operating permit. (1) No person shall engage in mining, ore processing, or reprocessing of tailings or waste material or construct or operate a hard-rock mill or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the board to do so. A separate operating permit shall be required for each complex. Prior to receiving an operating permit from the board, any person must pay the basic permit fee of $25 and must submit an application on a form provided by the board, which shall contain the following information and any other pertinent data required by the rules:

(a) name and address of the operator and, if a corporation or other business entity, the name and address of its principal officers, partners, and the like and its resident agent for service of process, if required by law;

(b) minerals expected to be mined;

(c) a proposed reclamation plan;

(d) expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land which will be disturbed, topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, location of proposed access roads to be built, and the names and addresses of the surface and mineral owners of all lands within the mining area, to the extent known to applicant;

(f) types of access roads to be built and manner of reclamation of road sites on abandonment;

(g) a plan which will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(h) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(i) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that such structures are safe and stable;

(j) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water; and

(k) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site.

(2) Except as provided in subsection (4), the permit provided for in subsection (1) for a large-scale mineral development as defined in 90-6-302 shall be conditioned to provide that activities under the permit may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the board, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(3) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302(4) and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the board with proof that he has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that he has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the board that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the board shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

(4) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

History: En. Sec. 8, Ch. 252, L. 1971; amd. Sec. 4, Ch. 281, L. 1974; R.C.M. 1947, 50-1208; amd. Sec. 6, Ch. 588, L. 1979; amd. Sec. 13, Ch. 617, L. 1981; amd. Sec. 1, Ch. 489, L. 1983; amd. Sec. 1, Ch. 345, L. 1985; amd. Sec. 3, Ch. 453, L. 1985; amd. Sec. 2, Ch. 582, L. 1985; amd. Sec. 1, Ch. 311, L. 1987.

Compiler's Comments

1987 Amendment: In (2), in two places in first sentence, substituted reference to approval of impact plan under 90-6-307 for reference to approval by the hard-rock mining impact board.

Cross-References

Landowner notification of surface operations, Title 82, ch. 2, part 3.

82-4-336. Reclamation plan and specific reclamation requirements. (1) The reclamation plan shall provide that reclamation activities, particularly those relating to control of erosion, to the extent feasible, shall be conducted simultaneously with the operation and in any case shall be initiated promptly after completion or abandonment of the operation on those portions of the complex that will not be subject to further disturbance. In the absence of an order by the board providing a longer period, the plan shall provide that reclamation activities shall be completed not more than 2 years after completion or abandonment of the operation on that portion of the complex.

(2) In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without previously obtaining from the department written approval of his proposed change.

(3) Provision shall be made to avoid accumulation of stagnant water in the mined area which may serve as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life.

(4) All final grading shall be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the board for a supervised sanitary fill.

(5) Where mining has left an open pit exceeding 2 acres of surface area and the composition of the floor or walls of the pit are likely to cause formation of acid, toxic, or otherwise pollutive solutions (hereinafter "objectionable effluents") on exposure to moisture, the reclamation plan shall include provisions which adequately provide for.

(a) insulation of all faces from moisture or water contact by covering to a depth of 2 feet or more with material or fill not susceptible itself to generation of objectionable effluents;

(b) processing of any objectionable effluents in the pit before their being allowed to flow or be pumped out of it to reduce toxic or other objectionable ratios to a level considered safe to humans and the environment by the board;

(c) drainage of any objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels considered safe by the board before release from the settling basin; or

(d) absorption or evaporation of objectionable effluents in the open pit itself; and

(e) prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and such other devices as may reasonably be required by the board.

(6) Provisions for vegetative cover shall be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan. The reestablished vegetative cover shall meet county standards for noxious weed control.

(7) The reclamation plan shall provide for the reclamation of all disturbed land. Proposed reclamation shall provide for the reclamation of disturbed land to comparable utility and stability as that of adjacent areas, except for open pits and rock faces which may not be feasible to reclaim. In such excepted cases, the board shall require sufficient measures to insure public safety and to prevent the pollution of air or water and the degradation of adjacent lands.

(8) A reclamation plan shall be approved by the board if it adequately provides for the accomplishment of the activities specified in this section.

(9) The reclamation plan shall provide for permanent landscaping and contouring to minimize the amount of precipitation that infiltrates into disturbed areas, including but not limited to tailings impoundments and waste rock dumps. The plan shall also provide measures to prevent objectionable postmining ground water discharges.

History: En. Sec. 9, Ch. 252, L. 1971; amd. Sec. 5, Ch. 281, L. 1974; amd. Sec. 14, Ch. 39, L. 1977; R.C.M. 1947, 50-1209; amd. Sec. 2, Ch. 345, L. 1985; amd. Sec. 4, Ch. 453, L. 1985.

Cross-References

County weed control, Title 7, ch. 22, part 21.

Denial of operating permit for failure of reclamation plan to comply with air quality, water quality, or public water treatment criteria, 82-4-351.

82-4-337. Inspection — issuance of operating permit — modification. (1) (a) The board shall cause all applications for operating permits to be reviewed for completeness within 30 days of receipt. The board shall notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within 30 days of receipt.

(b) Unless the review period is extended as provided in this section, the board shall review the adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the board does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of operation within such time period, the operating permit shall be issued upon receipt of the bond as required in 82-4-338. The department shall promptly notify the applicant of the form and amount of bond which will be required. No permit may be issued until sufficient bond has been submitted pursuant to 82-4-338.

(c) (i) Prior to issuance of a permit, the department shall inspect the site unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible due to extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department must serve written notice of extension upon the applicant in person or by certified mail, and any such extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) If the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 365 days in order to permit reasonable review.

(iii) Failure of the board to act upon a complete application within the extension period constitutes approval of the application, and the permit shall be issued promptly upon receipt of the bond as required in 82-4-338.

(2) The operating permit shall be granted for the period required to complete the operation and shall be valid until the operation authorized by the permit is completed or abandoned unless the permit is suspended or revoked by the board as provided in this part.

(3) The operating permit shall provide that the reclamation plan may be modified by the board, upon proper application of the permittee or department, after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations are revealed by field inspection.

History: En. Sec. 10, Ch. 252, L. 1971; amd. Sec. 6, Ch. 281, L. 1974; amd. Sec. 1, Ch. 427, L. 1977; R.C.M. 1947, 50-1210(1), (2); amd. Sec. 7, Ch. 588, L. 1979; amd. Sec. 5, Ch. 453, L. 1985.

Cross-References

Contested administrative cases, Title 2, ch. 4, part 6.

82-4-338. Performance bond. (1) The applicant shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the department of not less than $200 or more than $2,500 for each acre or fraction thereof of the disturbed area, conditioned upon the faithful performance of the requirements of this part and the rules of the board. In lieu of such bond, the applicant may file with the board a cash deposit, an assignment of a certificate of deposit, or other surety acceptable to the board. Regardless of the above limits, the bond shall not be less than the estimated cost to the state to complete the reclamation of the disturbed land. A public or governmental agency shall not be required to post a bond under the provisions of this part. A blanket performance bond covering two or more operations may be accepted by the board. Such blanket bond shall adequately secure the estimated total number of acres of disturbed land. When determined by the department that the set bonding level of a permit or license does not represent the present costs of reclamation, the department may modify the bonding requirements of that permit or license.

(2) No bond filed in accordance with the provisions of this part shall be released by the department until the provisions of this part, the rules adopted pursuant thereto, and this reclamation plan have been fulfilled.

(3) No bond filed for an operating permit obtained under 82-4-335 may be released until the public has been provided an opportunity for a hearing.

History: En. Sec. 11, Ch. 252, L. 1971; amd. Sec. 7, Ch. 281, L. 1974; R.C.M. 1947, 50-1211; amd. Sec. 3, Ch. 345, L. 1985.

Cross-References

Surety bonds and companies, Title 28, ch. 11, part 4, Title 33, ch. 26, part 1.

82-4-339. Annual report of activities by permittee — fee — notice of large-scale mineral developer status. (1) Within 30 days after completion or abandonment of operations on an area under permit or within 30 days after each anniversary date of the permit, whichever is earlier, or at such later date as may be provided by rules of the board and each year thereafter until reclamation is completed and approved, the permittee shall pay the annual fee of $25 and shall file a report of activities completed during the preceding year on a form prescribed by the board which report shall:

(a) identify the permittee and the permit number;

(b) locate the operation by subdivision, section, township, and range and with relation to the nearest town or other well-known geographic feature;

(c) estimate acreage to be newly disturbed by operation in the next 12-month period;

(d) include the number of persons on the payroll for the previous permit year and for the next permit year at intervals that the department considers sufficient to enable a determination of the permittee's status under 90-6-302(4); and

(e) update any maps previously submitted or specifically requested by the board. Such maps shall show:

(i) the permit area;

(ii) the unit of disturbed land;

(iii) the area to be disturbed during the next 12-month period;

(iv) if completed, the date of completion of operations;

(v) if not completed, the additional area estimated to be further disturbed by the operation within the following permit year; and

(vi) the date of beginning, amount, and current status of reclamation performed during the previous 12 months.

(2) Whenever the department determines that the permittee has become or will, during the next permit year, become a large-scale mineral developer, it shall immediately serve written notice of that fact on the permittee, the hard-rock mining impact board, and the county or counties in which the operation is located.

History: En. Sec. 12, Ch. 252, L. 1971; R.C.M. 1947, 50-1212; amd. Sec. 3, Ch. 582, L. 1985.

Cross-References

Hard-rock mining impact, Title 90, ch. 6, part 3.

Chapter 104

HARD-ROCK MINING IMPACT BOARD

Sub-Chapter 1

Organizational Rule

Rule 8.104.101 Organization of Board

Sub-Chapter 2

Procedural Rules

Rule 8.104.201 Public Participation

8.104.202 General Procedural Rules

8.104.203 Format and Content of Plan

8.104.203A Definitions

8.104.204 Notification and Submission of Plan

8.104.205 Proof of Submission of Plan to Affected Counties

8.104.206 Computation of Time

8.104.207 Contents of Objection to Plan

8.104.208 Submission of Objections to Board

8.104.208A Filing of Objections During Extension Period

8.104.209 Notification of Board Concerning Negotiations on Plan

8.104.210 Ex Parte Communications with Board Members

8.104.211 Implementation of Approved Impact Plan

8.104.211A Evidence of the Provision of Service or Facility

8.104.212 Adoption of Policies or Guidelines

8.104.213 Modification of Plan

8.104.214 Financial Guarantee of Tax Prepayment

8.104.215 (Reserved)

8.104.216 Content of Petition for Plan Amendment

8.104.217 Waiver of Impact Plan Requirement

Sub-Chapter 3

Rules Governing Awarding of Grants

Rule 8.104.301 General Provisions

8.104.302 Content of Grant Applications

8.104.303 Submittal Deadlines

8.104.304 Application Review Process

8.104.305 Contract with Successful Applicant

Sub-Chapter 1

Organizational Rule

8.104.101 ORGANIZATION OF BOARD (1) The hard-rock mining impact board is created by section 2-15-1822, MCA, and appointed by the governor. By statute the board comprises five members, three of whom reside in an area impacted by large-scale mineral development. No more than three members may reside in the same congressional district. The board consists of:

(a) a representative of the hard-rock mining industry;

(b) a representative of a major financial institution in Montana;

(c) an elected school district trustee;

(d) an elected county commissioner; and

(e) a member of the public-at-large.

(2) Information or submissions: Inquiries regarding the board may be addressed to the Administrative Office, Hard-Rock Mining Impact Board, Department of Commerce, Capitol Station, Helena, Montana 59620-0524.

(3) Personnel roster

Mr. Leonard H. McKinney, Chairman, 312 13th Avenue North, Lewistown, Montana 59457 - member of public-at-large.

Mr. Jim Edwards, 2005 Washoe, Anaconda, Montana 59722 - county commissioner.

Mr. Donald Kinsey, Vice-Chairman, P. O. Box 1004, Big Timber, Montana 59011 - school district trustee.

Mr. Edward Jasmin, Norwest Bank, P. O. Box 597, Helena, Montana 59624 - member of financial institution.

Mr. Roger Rice, 3003 Leeann Blvd., Billings, Montana 59102 - industry representative.

(4) For administrative purposes the board is attached to the department of commerce. For staffing purposes the board is attached to the department's local government assistance division. A chart of the department's

organization is found at page 8-13 of these rules and by this reference is made a part of the board's organizational rules.

Sub-Chapter 2

Procedural Rules

8.104.201 PUBLIC PARTICIPATION (1) The hard-rock mining impact board hereby adopts and incorporates by reference ARM 8.2.101 through 8.2.207 which sets forth the department of commerce's public participation rules. A copy of the rules may be obtained from the Hard-Rock Mining Impact Board, 1400 Broadway, Helena, Montana 59620-0524.

8.104.202 GENERAL PROCEDURAL RULES (1) The hard-rock mining impact board hereby adopts and incorporates by reference ARM 1.3.101 through 1.3.234 which sets forth the attorney general's model procedural rules. A copy of the model rules may be obtained from the Hard-Rock Mining Impact Board, 1400 Broadway, Helena, Montana 59620-0524. The board will treat the hearing provided for by section 90-6-307 (7), MCA as a contested case hearing under the model rules.

8.104.203 FORMAT AND CONTENT OF PLAN (1) The format and substance of the plan shall allow for a ready review and analysis of the plan, its several parts, and their relationships to each other.

(2) The format of the plan shall contain the following elements:

(a) the name, address and phone number of the developer's contact person;

(b) a brief summary of the impact plan;

(c) a list of the local government units which the developer believes might potentially be affected by the development;

(d) a table of contents;

(e) numbered pages throughout.

(3) The plan shall be bound in a manner that will allow for ready removal and insertion of pages.

(4) The impact plan shall contain, at a minimum, information specifically required by statute, information necessary to the implementation of statute, and information necessary to the review and implementation of the plan, including but not limited to:

(a) As required by 90-6-307(1), MCA, the plan shall contain the following information:

(i) a timetable for development, including the opening date of the development and the estimated closing date;

(ii) the estimated number of persons coming into the impacted area as a result of the development;

(iii) the increased capital and operating cost to local government units for providing services which can be expected as a result of the development;

(iv) the financial or other assistance the developer will give to local government units to meet the increased need for services.

(b) As required by 90-6-307(2), MCA, in the impact plan the developer shall commit itself to pay all of the increased capital and net operating cost to local government units that will be a result of the development, as identified in the impact plan, either from tax prepayments, as provided in 90-6-309, MCA special industrial educational impact bonds, as provided in 90-6-310, MCA or other funds obtained from the developer, and shall provide

a time schedule within which it will do so. The plan may provide for funding from other revenue sources or funding mechanisms if the developer guarantees that the amount to be provided from these sources will be paid.

(c) If the plan provides for the prepayment of property taxes, the plan shall specify the conditions under and method by which prepaid taxes are to be credited, as provided by 90-6-309 (5), MCA.

(d) If the plan identifies a jurisdictional revenue disparity as provided for by 90-6-403 (1), MCA, the plan shall project the place of residence of employees and the district of enrollment of students, as required for 90-6-405 (2), MCA.

(e) The plan shall define the following terms in a manner consistent with common usage and appropriate to the specific large-scale mineral development:

(i) if property taxes are to be prepaid, "start of production", as required for 90-6-309 (4), MCA;

(ii) if property taxes are to be prepaid, "commencement of mining", as required for 90-6-309 (5), MCA;

(iii) "commercial production", as required for 90-6-311, MCA.

(f) In the plan the developer shall commit to notify the board and the affected local government units within 30 days of each applicable date identified in (e) of this subsection."

8.104.203A DEFINITIONS For purposes of these rules, the term "impacted area" means the jurisdictional area or areas of the affected local government units identified in an impact plan or in an amendment to an impact plan.

8.104.204 NOTIFICATION AND SUBMISSION OF PLAN (1) The developer shall submit 12 copies to the board and a sufficient number of copies to each affected county for distribution.

8.104.205 PROOF OF SUBMISSION OF PLAN TO AFFECTED COUNTIES (1) The board will accept as proof of the date of receipt of an impact plan by an affected county a dated receipt, signed by an authorized representative of the county, confirming delivery of the plan by registered mail, hand delivery, or otherwise or an acknowledged statement by the developer certifying the date of delivery of the plan to the county.

8.104.206 COMPUTATION OF TIME (1) In computing any period of time prescribed by sections 90-6-301 through 90-6-310, MCA, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday or a holiday. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period.

8.104.207 CONTENTS OF OBJECTION TO PLAN (1) An objection to an impact plan submitted to the board shall contain or show:

(a) the name(s) of the developer(s), the project and the impact plan;

(b) the date the objection is submitted;

(c) the name of the local government unit(s) raising the objection;

(d) the government unit's contact person(s) name, address, phone;

(e) the name of the local government unit(s) affected by the objection;

(f) the specific elements of the plan being objected to, giving the page number(s);

(g) the substance of the objection;

(h) the reasons for the objection;

(i) supportive data, information or analysis;

(j) references to other related portions of the plan (giving page numbers), such as:

(i) analysis of employment and population;

(ii) analysis of location, nature, extent and cost of impact;

(iii) proposed mitigation measure;

(iv) proposed timing and cost of mitigation measure;

(v) proposed method, amount, and source of financing of the mitigation measure;

(k) additional relevant information;

(l) the objector's proposal for resolving the disputed issues;

(m) a resolution dated and signed by the governing body of each objecting unit of local government confirming that the above statements appropriately reflect their views and concerns.

(2) A form outlining the contents required by this rule is available from the board's offices.

8.104.208 SUBMISSION OF OBJECTIONS TO BOARD (1) At least 15 copies of the objection(s) shall be filed with the board and a copy filed with each affected local government unit.

8.104.208A FILING OF OBJECTIONS DURING EXTENSION PERIOD (1) Only those affected local government units which have requested a 30-day extension of the initial review period pursuant to section 90-6-307 (6), MCA, may file objections to the plan during this extension. However, if an objection filed during this extension relates to the interests of a government unit which did not request an extension, that unit will be allowed to comment on the objection, and any such comment may be considered by the board in subsequent proceedings concerning the objection.

8.104.209 NOTIFICATION OF BOARD CONCERNING NEGOTIATIONS ON PLAN (1) By the end of the 30-day negotiating period described in section 90-6-307 (7), MCA, all affected parties shall notify the board in writing of the outcome of their negotiation efforts, clarifying which objections have been resolved and how and which objections still remain in contention. The developer shall provide the board with any mutually agreed upon amendments to the plan. The official copy of the amendments will bear the signatures of the developer's authorized representative, the chairman of the elected governing body of each affected unit of local government, and the chairman of the elected governing body of the county verifying the concurrence of their units of local government with the negotiated amendments.

8.104.210 EX PARTE COMMUNICATIONS WITH BOARD MEMBERS (1) No representative of any party to the plan may communicate with any board member outside the context of a public meeting on any issue related to the plan until the plan has received final approval.

(2) During the 90-day review period and the 30-day negotiation period the board's staff may not communicate with any party concerning the substance of a plan. However, the staff may at any time either on its own initiative

or in response to a request, provide information concerning the technical compliance of a plan with statutes and board rules and the plan review process provided that the information does not relate to the substance or merits of a particular plan. The staff shall maintain a log of any such contact.

8.104.211 IMPLEMENTATION OF APPROVED IMPACT PLAN (1) The hard-rock mining impact account may receive direct industry monies in compliance with the commitment made by the developer in an approved impact plan, to enable the board to transmit payments as provided by the schedule specified in the approved impact plan. The board will distribute these monies to the appropriate affected local government units in accordance with the law and the approved impact plan.

(2) The board will notify the department of state lands if the mineral developer fails to comply with the terms of the approved impact plan.

(3) In implementing an approved impact plan, the affected local government units and the mineral developer shall establish procedures acceptable to the board for transmitting payments and providing information required by statute or rule, including the following:

(i) Each local government unit entitled to receive grants or tax prepayments from a mineral developer as provided by an approved impact plan shall establish an impact fund within its budget. The impact fund budget must reflect tax prepayments, grants or other impact revenues to be received from the developer and expenditures contemplated by the approved impact plan.

(ii) The governing body shall provide the board with a copy of the adopted budget and any budget amendment related to the impact plan and impact fund and a copy of the resolution by which the governing body adopted that budget or budget amendment.

(iii) The affected local governing body may request that the developer make such payments as are provided for in the approved impact plan and as are consistent with the adopted budget or budget amendment of the local government unit. The governing body shall send to the board a copy of each such payment request. Each request must identify the name of the local government unit making the request; the date of the request; the name of the mineral developer responsible for making the payment; the amount of the requested payment; whether the request is for a tax prepayment, grant, or other funds; the purpose of the payment as specified in the approved impact plan; and the subaccount within the impact fund into which the payment will be deposited. The request must refer to those pages in the approved impact plan on which the purpose of the expenditure and the financial commitment are specified. The request must bear the signatures of the governing body of the affected local government unit.

(iv) If payment is to be made through the board, the board will deposit monies received from the developer into the hard-rock mining impact account to the credit of the affected local government unit. The board will transmit such payments upon written request from the governing body of the affected local government unit and upon receipt of that documentation specified in (iii) above and in ARM 8.104.214.

(v) If payment is made by the developer directly to the affected local government unit, the developer shall notify the board when the payment is made and the local government shall notify the board when the payment is received. Each notice must contain or reference that information required in (iii) of this rule. Forms for requesting, making or acknowledging receipt of payment are available from the board's office.

(vi) The mineral developer and the governing body of the affected local

government unit shall provide the board with a copy of any education impact bond agreement or other bond agreement entered into as a result of an approved impact plan within 15 days of their executing such an agreement. This agreement becomes part of the approved impact plan.

8.104.211A EVIDENCE OF THE PROVISION OF SERVICE OR FACILITY (1) For purposes of section 90-6-307 (12), MCA, the board will accept as evidence that an affected local government unit is providing or is preparing to provide an additional service or facility provided for in an approved plan a letter from the governing body certifying that it is providing or preparing to provide the service or facility and specifying the date on which it is anticipated that the service or facility will be made available. A copy of the local government unit's budget or budget amendment, reflecting the proposed expenditure for the service or facility must accompany or precede the letter.

8.104.212 ADOPTION OF POLICIES OR GUIDELINES (1) From time to time, the board may adopt policies or guidelines relating to its internal operations, to the preparation or content of impact plans, or to the relationship between developers and local government units. These policies or guidelines, which will not have the force or effect of administrative rules, will be compiled and made available for public inspection at the board's administrative office.

8.104.213 MODIFICATION OF PLAN (1) An impact plan or a proposed amendment to an approved plan may be modified during the review period, the negotiation period, or an extension of either, by mutual consent of the developer and the local government units affected by the modification. Modifications must meet the following requirements:

(a) Modification must be submitted in writing to the board and to all local government units that are party to the plan.

(b) The copy filed with the board must bear the signatures of the developer or its authorized representative and of the governing body of each local government unit that is a party to the modification.

(c) If there is a need to modify the format of the plan and if the modification of format does not affect the substantive provisions of the plan, the governing body of the county may act on behalf of all local government units within the county when it concurs with the modification to format.

(d) Any modification submitted less than 30 days prior to the end of the review period must carry with it a request from the local governing body for an extension which allows a 30-day review of the modification.

(e) All modifications must be incorporated into the plan before the board will approve the plan. The modified plan must comply with the form and content requirements for an impact plan as provided by Parts 3 and 4 of Title 90, Chapter 6 of the Montana Code Annotated and by the Administrative Rules adopted by the hard-rock mining impact board. In the modified plan the table of contents, summary, schedule of payment, and, if a part of the plan, the developer's statement of commitment, must accurately contain and reflect the modifications. Obsolete material must be deleted from the plan through the use of replacement pages that contain the reflect the modifications or, if the use of replacement pages is not feasible, obsolete material must be deleted by specific reference.

(f) The board may allow revisions to format following the review or negotiation period, or an extension of either, to the extent that such revisions are necessary to incorporate the modifications into the plan or an

amendment to the plan in order to comply with ARM 8.104.203.

8.104.214 FINANCIAL GUARANTEE OF TAX PREPAYMENTS (1) The financial guarantee required of a developer by section 90-6-309 (3), MCA to assure that property tax prepayments will be paid as needed by local government units shall meet the following requirements:

(a) The guarantee must cover the amount of money the developer has committed to prepay with provisions for any conditional payments provided for in the impact plan and for any prepayments for future fiscal years. Both the total amount covered by the guarantee and the specific purpose of each prepayment must be specified with sufficient clarity that it can be determined that the guarantee corresponds with and is sufficient to the prepayment commitments in the approved impact plan;

(b) The guarantee must make the money accessible to the Board in the event of a default on the part of the developer or the need for the board to resolve a dispute between the developer and an affected local government unit; and

(c) The funds contained in the guarantee mechanism must be protected from all uses not specified in or provided for by an approved impact plan or an approved amendment to the plan.

(2) The financial guarantee must be approved by the Board and in place within 10 days of the issuance of the operating permit by the department of state lands or prior to the time an affected local government unit must incur a financial obligation in implementation of the approved impact plan and in anticipation of revenues protected by the financial guarantee, whichever occurs first.

8.104.215 (reserved)

8.104.216 CONTENTS OF PETITION FOR PLAN AMENDMENT (1) Under certain circumstances the mineral developer or the governing body of an affected county (on its own behalf or on behalf of another affected government unit with the county) may petition the board to amend an approved impact plan. The requirements and procedures for petitioning to amend a plan are provided in section 90-6-311, MCA, and a petition for an amendment must contain, include or identify the following:

(a) When applicable, a copy of a resolution, dated and signed by the governing body of each local government unit that is requesting the amendment, authorizing the county to submit the petition for the amendment of the impact plan.

(b) Date of the petition;

(c) The name of the mineral developer;

(d) County in which mineral development is located;

(e) Name, address, phone number and signature(s) of each petitioner (county and/or mineral developer);

(f) The local government units believed by the petitioner to be affected by the proposed amendment;

(g) As required by section 90-6-311 (2), MCA, an explanation of the need for an amendment, a statement of the facts and circumstances underlying the need for an amendment, and a description of the corrective measures proposed by the petitioner.

(h) The costs and commitments identified in the approved plan which will be changed as a result of the proposed amendment with page citations to the plan;

(i) Any other provisions of the approved plan which will be changed by the proposed amendment citing the pages of the plan on which these provisions are found.

(j) A statement as to which of the following is the legal basis for the petition:

(i) that the plan, itself, provides for amendment under certain condition and that those conditions have been met. (The specific conditions must be specified, the pages of the plan on which they are established must be cited, and the petitioner must establish that the conditions have been met.);

(ii) that employment at the large-scale mineral development is forecast to increase or decrease by at least 75 persons, as determined under section 90-6-302 (4), MCA, over or under the employment levels contemplated by the approved impact plan;

(iii) that the approved impact plan is materially inaccurate because of errors in assessment and that two years have not elapsed since the date the facility began commercial production (the date the facility began commercial production must be indicated); or

(iv) that the governing body of an affected county and the mineral developer are joining in the petition to amend the impact plan.

8.104.217 WAIVER OF IMPACT PLAN REQUIREMENT (1) The board will grant a waiver or a conditional waiver of the impact plan requirement to large scale-mineral development permittees, as authorized by section 90-6-307 (14), MCA, if:

(a) The permittee and the governing bodies of all potentially affected local government units, as identified by the board and the affected county or counties, notify the board in writing that:

(i) they do not anticipate a need to increase local government services and facilities as a result of the increase in employment identified in the permittee's annual report to the department of state lands; or

(ii) the anticipated increase in need for services and facilities is not expected to result in an increase in local government costs to the non-developer taxpayer, whether as a result of the increase in employment or as a result of stipulations to a conditional waiver;

(b) No potentially affected local government unit requests the board to deny the waiver or to require an impact plan; or

(c) Following a public hearing on the proposed waiver, or notice and opportunity for a hearing, the board considers it unlikely that adverse fiscal impacts will affect any local government unit, either as a result of the increase in employment identified in the permittee's annual report, as required by 82-4-339, MCA, or as a result of the associated changes in the mining operation.

(2) Following its decision, the board will provide a copy of the waiver, conditional waiver or denial of waiver to the department of state lands, the permittee and the potentially affected local government units identified by the board and the affected county or counties for purposes of 90-6-307 (14), MCA.

Sub-Chapter 3

Rules Governing Awarding of Grants

8.104.301 GENERAL PROVISIONS (1) In the event monies are made

available to the hard-rock mining impact account for the purposes of grants to be made by the board, the board will receive and review applications and award grants on the basis of local need; severity of impact from mineral development; the extent of local effort in meeting local needs; and the availability of grant funds. In receiving applications and awarding grants, the board will use the procedures outlined in the following rules.

8.104.302 CONTENT OF GRANT APPLICATIONS (1) Following an inquiry by the applicant, the board will provide an application form requesting such information as is necessary to allow the board to verify the eligibility of the applicant, to evaluate the application and, if necessary, to establish priorities among eligible applications.

(2) Items to be included in the application will be the name of the applicant; a description of the proposed project; a discussion of the need the project is intended to meet; how the specific project will meet that need; local priority for the project and how that priority was established; the relationship of the proposed project to a major hard-rock mineral development; the relationship of the proposed project to appropriate local plans; relevant budgetary information, including estimated cost of project and how it is to be financed initially and over time; a summary of current and projected revenues, revenue sources, expenditures, bonding capacity and indebtedness; and such additional information as the board may consider appropriate to the specific type of application.

(3) Information about the grant program and the requisite forms will be made available from the board's administrative office.

8.104.303 SUBMITTAL DEADLINES (1) Applications shall be submitted to the administrative office no less than 30 days prior to board consideration. Exceptions may be made at the board's discretion.

8.104.304 APPLICATION REVIEW PROCESS (1) The Board will utilize an appropriate application process.

8.104.305 CONTRACT WITH SUCCESSFUL APPLICANT (1) Upon the awarding of a grant, an appropriate contractual agreement will be executed between the hard-rock mining impact board and the local government unit.

FORMAL STATEMENT OF POLICIES AND GUIDELINES

Updated September, 1987

The Hard-Rock Mining Impact Board has adopted the following policies and guidelines to facilitate implementation of the Hard-Rock Mining Impact Act and the companion Property Tax Base Sharing Act. Policies and guidelines are formulated for clarification and guidance only and are not intended to have the force or effect of administrative rule.

Policies and guidelines are adopted, amended, or deleted in the course of the Board's public meetings and are compiled and made available for public inspection in the Board's Administrative Office. To ensure the public's continued awareness of its intention to adopt policies and guidelines as well as rules, the Board has included the following statement in the Administrative Rules of Montana:

> Adoption of Policies or Guidelines: (1) From time to time the Board may adopt policies or guidelines relating to internal operations, to the preparation or content of impact plans, or to the relationship between developers and local government units. These policies and guidelines, which will not have the force or effect of administrative rules, will be compiled and made available for public inspection at the Board's Administrative Office.
>
> [ARM 8.104.212]
>
> NOTE: This policy was adopted in 1982. Since that time both the statutory and rulemaking authority of the Board has been expanded. The Board has discussed changing the first sentence of the rule to reflect these changes: "From time to time the Board may adopt policies or guidelines relating to internal operations, the preparation or content of impact plans, the relationship between developers and local government units, or other matters over which the Board has administrative or quasi-judicial authority."

In addition to this compilation of policies, the Board maintains a full set of all material presented to the Board by its staff at each meeting, including the minutes of previous meetings. This material is also available for public inspection at the Board's Administrative Office.

For ease of reading, Board policies and guidelines are presented here in four categories:

A. General Policies.
B. Policies Related to the Preparation, Review, Implementation and Amendment of an Impact Plan.
C. Policies Related to the Operations of the Board.
D. Policies Related to the Hard-Rock Mining Impact Trust Account Grant-Loan Program.

A. GENERAL POLICIES

1. The major responsibilities of the Board are: (a) to encourage and facilitate cooperation among mineral developers and local government units in the preparation, review, implementation, and amendment of their hard-rock mining impact plans; (b) to clarify provisions of the Hard-Rock Mining Impact Act as needed; (c) to resolve formal objections to proposed impact plans or impact plan amendments; (d) to carry out administrative responsibilities as provided by the Impact Act and the Property Tax Base Sharing Act and as contemplated in the Statements of Intent attached to the Acts or to subsequent amendatory legislation; and (e) to administer the Hard-Rock Mining Impact Trust Account and grant-loan program for mitigation of adverse fiscal and economic impacts resulting from mine workforce reduction and mine closure.

2. The Board recognizes a need to adopt policies and guidelines in the course of open meetings to help mineral developers and local government units identify and resolve differing interpretations of the Hard-Rock Mining Impact Act, in order to establish interpretations and procedures that are consistent with the language and purpose of the Act and, to the extent possible, that are mutually acceptable to the affected parties.

3. The Board invites interested persons to attend Board meetings and to participate as appropriate in discussions of issues before the Board.

4. The Board will work cooperatively with mineral developers, local government units, citizen groups, legislative committees and other agencies concerned with the implementation of the Hard-Rock Mining Impact Act and the Property Tax Base Sharing Act.

5. While by no means indifferent to the substance, quality, or effect of the Hard-Rock Mining Impact Act, the Board recognizes its quasi-judicial role and at this time does not wish to take any official position on disputed substantive issues related to the Act.

6. In recognition of the cooperative effort necessary to mitigate the potential adverse impacts of resource development and in order to carry out its statutory responsibilities, the Board intends to develop and to encourage a better understanding of hard-rock mineral development and of the process of assessing, planning for and mitigating adverse fiscal and economic impacts to local communities resulting from mineral development.

B. POLICIES RELATED TO THE PREPARATION, REVIEW, IMPLEMENTATION AND AMENDMENT OF A HARD-ROCK MINING IMPACT PLAN

1. The Board encourages mineral developers and affected local government units to cooperate in the preparation and implementation of the impact plan.

2. The Board encourages the developer to consider inviting affected local government units to review a draft of the proposed impact plan before submitting the plan for formal review, in order to identify potential major issues and to refine details of the proposed plan.

3. Outline of an Impact Plan

An impact plan reasonably consists of more than the identification of when, how, by whom and to whom specific local public sector impact costs will be paid. The Hard-Rock Mining Impact Act calls for review of the impact plan by the affected local governments and by the Hard-Rock Mining Impact Board in case there is disagreement between the developer and the affected local governments over sections of the plan. The Board suggests that the plan should contain, directly or by reference, such planning information, data, assumptions or analyses as are needed to allow a reasonable review of its conclusions about public service impacts and financing and the manner by which the conclusions are reached. To aid in this review, the impact plan should make clear distinctions among, and show the relationships of, the following factors affecting local government units:

i) current population;
ii) current capacities, adequacy, and maintenance and operating requirements of facilities and services;
iii) current revenues and expenditures;
iv) levels and timing of anticipated population changes without the proposed mining project;
v) effects over time on facilities, services, revenues and expenditures of anticipated population or economic changes without the mining project;
vi) proposed timetable for the mineral development, including the anticipated opening and closing dates;
vii) timing, levels and location of anticipated employment and population changes resulting from the proposed mining project;
viii) anticipated effects of the population or activities resulting from the proposed mining project on local government facilities and services:
    (a) where (by community)
    (b) what (capital facility, equipment, staffing, maintenance and operating requirements and so forth) and
    (c) when (by year of need including planning, elections required, if any, construction, maintenance and operating requirements, and so forth).

(Preferably, items ii and viii should be parallel formats with iii to vii providing the connecting links.)

ix) anticipated effects of the mineral development on public sector revenues by year;
x) a clear identification of when and how the project-related local government facility and service needs will be met, including at least:
    (a) need (what, where, when the need will occur);
    (b) when and how the need will be addressed;
    (c) increased capital and operating costs to the local government unit for providing each affected service; and
    (d) timing, source, method, and amount of financing to meet these increased costs, including the required time schedule;
xi) type, amount and timing of local government planning-related

expenses that were appropriately incurred as a consequence of the proposed large-scale mineral development prior to the approval of the impact plan and the method, amount and time schedule of the developer's payment of these impact costs to the affected local government unit;

xii) additional policies or activities of the developer that will significantly help prevent or mitigate potential adverse impacts; and

xiii) key assumptions and methodologies employed in the preparation of the plan that need to be articulated to allow adequate review of the plan.

Although not specifically required, the developer and affected local governments may wish the impact plan to contain or clarify:

i) existing and proposed local government policies or activities that will significantly help prevent or mitigate potential adverse impacts;

ii) provisions that allow for adequate flexibility within the plan itself for adjustments to be made as the plan is implemented, if changes are warranted in the future because of currently unanticipated circumstances;

iii) provisions that would clarify what recourse or protection, if any, would be available to affected local governments for recovering any project-related indebtedness if the mining project should be significantly delayed or cancelled prematurely; and

iv) specific concerns or expectations regarding the implementation of the plan such as monitoring requirements and "if/then" triggers and consequent actions.

The Board feels this information may help in evaluating the impact plan in case the Board must adjudicate disputes.

4. The plan must include a list of potentially affected local government units [ARM 8.104.203]. The Board encourages the county, other local governmental units and the developer to prepare a list of the names and addresses of local government units, their representatives and others to whom the plan is to be provided for review and implementation purposes. This list when prepared is to be filed with the Hard-Rock Mining Impact Board.

5. The county is required to publish notice of the receipt of the plan [90-6-307(1), MCA]. The Board requests the county to publish the required notice of receipt of the plan in a large, readable format and as soon as possible after receipt of the plan.

6. As provided by 90-6-307, MCA the "estimated number of persons coming into the impact area as a result of the development" is to be determined by the developer and the affected units of local government. The population encompassed by the phrase is to be defined in the plan and the number of anticipated inmigrants is to be specified, as required by the Hard-Rock Mining Impact Act and, if applicable, by the Property Tax Base Sharing Act.

The Board may be called upon to help define the term or to estimate the number only if a dispute arises under the provisions of section 90-6-307 or 90-6-311, MCA.

Local government impacts resulting from persons moving into the area as a result of the mineral development and any financial or other obligations of the developer must be specified in the impact plan. The estimated number of persons and the obligations of the developer that appear in an approved plan can only be changed by the amendment procedure outlined in Section 90-6-311, MCA.

7. Large-scale mineral developers and affected local government units are responsible to ensure that the impact plan complies with all statutory and regulatory requirements. [The Board invites affected local government units, developers of new large-scale mineral developments, and mine permittees who attain large-scale status as defined by the Hard-Rock Mining Impact Act to submit draft proposed impact plans to the Board's staff for an informal technical compliance review, if they should wish to do so, prior to submitting the plan for the formal 90-day review required by statute.] [Staff will carry out its review as expeditiously as possible.] **Board Action**

8. The Board has prepared a guide and other materials to assist mineral developers, affected local government units and other interested persons with the implementation of the Hard-Rock Mining Impact Act and the Property Tax Base Sharing Act. These publications contain and reflect additional policies or interpretations of the Board. Through its rules, policies and publications, the board is attempting to facilitate legally consistent and workable implementation of this impact mitigation legislation. The Board also intends these policies, rules and publications to serve as guidance for the board itself, to ensure consistent and equitable interpretations when the Board is called upon to carry out its quasi-judicial responsibilities as adjudicator of disputes.

C. POLICIES RELATED TO THE OPERATIONS OF THE BOARD

1. The Board members will elect from among themselves their Chairman and Vice-Chairman for terms of office to be determined by the Board.

2. All travel by Board members at other than Board meetings should be approved in advance by the Chairman, if the Board member is to be reimbursed his authorized expenses.

3. The Board will refer unresolved internal legal questions to its legal staff for review and recommendation prior to deciding upon a further course of action.

4. Recognizing the Board's unique authority to hire its own professional staff and recognizing the Board's attachment to the Department of Commerce for administrative purposes, the Board authorizes its professional staff to serve as a resource for the Department, provided always that the first priority of the staff is to meet the needs of the Board and those whom it most directly serves. In this regard, the Board supports the Governor's

appointment of the Board's administrative officer as the State's economic development representative on the Balance of State-Private Industry Council.

5. Upon its receipt of the impact plan, the Board will remind the county of its responsibility to issue notice and will request that a copy of the notice be sent to the Board.

6. The developer is required to provide the Board with proof that the impact plan has been submitted to the affected counties: 90-6-307(1), MCA; ARM 8.104.205. Consistent with ARM 8.104.205, the Board will determine what constitutes adequate proof of submission on a case-by-case basis upon receipt of the developer's evidence of submission.

7. At the end of the 90-day plan review period, the Board will determine whether objections have been filed. If no objections have been filed, the Board will acknowledge that the plan stands approved.

   The Board will notify the Department of State Lands upon receipt of the developer's written guarantee of compliance with the commitments and time schedule in the approved plan.

8. If unresolved objections remain at the end of the negotiating period, the Board will:

   a. direct its legal council to issue the required public notice that the requisite public hearing will be held in the most affected county,
   b. hold the public hearing; and
   c. after the public hearing on objections to an impact plan, will serve on all affected parties the Board's findings and amendments to the impact plan, if any. The Board will serve the amended plan in its entirety only if the Board determines the amendments to be so extensive as to warrant serving the entire plan.

9. The Board will submit its findings and the approved plan as amended to the developer by registered mail with return receipt requested.

In addition to these policies or guidelines the Board will in all likelihood develop some procedures which do not necessarily warrant inclusion in a policy statement. However, if the Board appears to have arrived at a de facto policy as a matter of habitual practice or tacit concurrence, any interested person is invited to request the Board to clarify its position.

D. POLICIES FOR THE GRANT AND LOAN PROGRAM

The Board has formulated and adopted the following policies and proposed rules for the hard-rock mining impact trust account grant and loan program.

PROPOSED RULES

The Board, at its August 13, 1987 meeting, approved the following as proposed rules for administering the Hard-Rock Mining Impact Trust Account Program. These proposed rules are to be listed with and remain as Board policy until such time as the Board feels they should be formally adopted through the

Administrative Rule making process.

PROPOSED RULE I. DETERMINATION OF WORKFORCE REDUCTION OR CESSATION OF MINING-RELATED ACTIVITY

(1) Upon request by an affected mineral developer or a potentially affected local government unit, the board will determine whether a mining operation has permanently ceased all mining-related activity or has experienced at least a 50 percent reduction in its full-time equivalent mining workforce over the immediately preceding 5-year period.

(2) If tne board determines that such a workforce reduction or cessation has occurred, it will notify the affected mineral developer, the county and school districts in which the mine is located, and the municipality located nearest to the mine. It will also publish a notice of its determination in a newspaper of general circulation in the affected county or counties. The board's notices will include a brief description of the grant-loan program for local government units and areas determined by the board to have been adversely affected by a cessation or reduction of mining activity.

[The reason for adopting proposed Rule I is to clarify and implement the requirement of section 90-6-321(1), MCA, that the board determine whether a reduction in mining workforce or cessation in mining-related activity has occurred.]

PROPOSED RULE II. DESIGNATION OF LOCAL GOVERNMENT UNITS AND AREAS IMPACTED BY THE CESSATION OR REDUCTION OF MINING ACTIVITY

(1) After the board has determined that a mineral development has ceased all mining-related activity or has experienced a 50% reduction in workforce, any local government unit or group of local government units located in the potential impact area may apply to the board for designation as an impacted local government unit or area. The applicant for designation shall provide the board with appropriate documentation, based on the criteria in (2), which demonstrates that it has experienced or will experience adverse fiscal or economic impacts as a result of the workforce reduction or cessation of mining-related activity identified by the board. Based on this documentation and upon its own evaluation, the board will designate the local government units and areas which are impacted by the cessation or reduction in mining-related activity.

(2) Tne board will consider for designation any local government unit or jurisdictional area which:

(a) includes the affected mineral development in its taxing jurisdiction and is likely to experience a reduction in taxable valuation as a result of the cessation or reduction in mining-related activity;
(b) is the place of residence for mine-related employees and provides services to those employees and their families;
(c) is a school district in which children of mine-related employees are enrolled; may experience a reduction in enrollment with a consequent loss of revenue from the state school foundation program in amounts greater than related reductions in operating costs;

(d) may experience a temporary need to provide additional services related to the effects of the reduction or cessation of mining-related activities;
(e) has incurred bonded or other indebtedness as a result of serving a mine-related population;
(f) provides significant public or private sector services as a result of the mineral development;
(g) was designated as an affected local government unit in an approved impact plan; or
(h) can document a reasonable expectation of adverse fiscal or economic impact, including adverse impact to the local labor force.

(3) Designated local government units in any impact area for which a county subaccount has been established under section 90-6-322, MCA, may apply for grants and loans from the appropriate hard-rock mining impact trust subaccount to help mitigate adverse fiscal and economic impacts resulting from the workforce reduction or cessation of mining-related activity.

[The reason for adopting proposed Rule II is is to comply with the requirement of Section 90-6-322, MCA, that the board adopt rules that provide a procedure for designating local government units and areas impacted by the cessation or reduction of mining-related activity. A local government unit or the community it serves may be affected by loss of tax base and tax revenue from the development itself or from employees at the development, by increased demands on specific local government services, or by the loss of other employment opportunities or economic base as a result of the cessation or reduction in mine-related activity.]

POLICIES

1. GENERAL PROVISIONS

(1) The board will initiate its determination of whether a mining operation has experienced at least a 50 percent reduction in workforce or has permanently ceased mining-related activity following a written request from the affected mineral developer or from a potentially affected local government unit.

(2) In determining whether a mining operation has experienced a 50 percent reduction in "full-time equivalent workforce" or has "permanently ceased all mining-related activity," the board interprets 90-6-321, MCA as follows:

a. "All mining-related activity" applies to mining and to associated milling that occurs in close proximity to the mine site.

b. "All mining-related activity" does not extend to post-mining reclamation activities. The commencement of permanent post-mining reclamation is considered an indication that a permanent cessation of mining-related activity has occurred.

c. "Full-time equivalent workforce" will be as defined by the federal Wage and Hour Act and by the Montana Department of Labor and Industry.

(3) The grant and loan program relates to the workforce reduction or closure only of mines that have incurred a metal mines license tax liability after December 31, 1984.

(4) Section 90-6-322(2), MCA provides that the board determines to what degree a local government unit is directly impacted by a cessation or reduction in mining-related activity. The board interprets this as constituting an affirmation of the board's decision-making authority, rather than as a requirement for a separate decision which would have no meaning outside the context of specific applications for grants and loans.

(5) The board will maintain data by mine within each county subaccount to assist the board in determining how much money to make available for grants and loans follwing a workforce reduction or closure in a county with two or more mines that pay metal mines license tax.

(6) The board will determine local need and severity of impact on a case by case basis, in a manner consistent with the statute.

(7) Any interest received by the board in repayment of a loan will be credited to the subaccount from which the loan is made.

2. GENERAL PROVISIONS AND LIMITATIONS ON GRANT AND LOAN APPLICATIONS

(1) The board will award grants or loans from the hard-rock mining impact trust account only to those local government units designated by the board.

(2) The amount of money available for grants or loans to designated local government units as the result of a mine workforce reduction or closure will not exceed the balance of the metal mines license tax revenue in the hard-rock mining impact trust account subaccount for the county in which the mine is located. The board may further limit the amount of money available for grants or loans as a result of a specific cessation or reduction in mining-related activity, if such limitation is needed to protect the interests of local government units and communities that may experience further adverse impacts at a later time.

(3) Not more than 50 percent of the money available in the hard-rock mining impact trust account will be granted or loaned for the purpose of assisting local government units as provided under (a) and (b) of 90-6-321(1), MCA or (a) or (b) of policy 3, that is, for purposes of decreasing unusually high mill levies or retiring local government debts. The board interprets "available" as applying to the amount accumulated in a given subaccount over time.

(4) The reason for adopting policy 4 is to consolidate in a single policy statement the general statutory requirements for and limitations to grants and loans awarded from the hard-rock mining impact trust account.

3. PURPOSE AND BASIS FOR AWARDING GRANTS AND LOANS FROM THE HARD-ROCK MINING IMPACT TRUST ACCOUNT

(1) The board will receive and review applications and in its discretion may award grants and loans for the purpose of assisting designated local governments to:

(a) pay for outstanding capital project bonds or other expenses incurred at least 5 years prior to the end of mining activity or the 50 percent of greater reduction in workforce;
(b) decrease unusually high property tax mill levies that are directly caused by the cessation or reduction of mining activity;
(c) promote diversification and development of the economic base within a local government unit;
(d) attract new industry to the impact area; and
(e) provide cash incentives for expanding the employment base of the impact area.

(2) The board will review applications and award grants or loans to designated local government units on the basis of:

(a) local need;
(b) severity of impact from mineral development workforce reduction or closure;
(c) extent of local effort in meeting local needs;
(d) the availability of funds within the appropriate subaccount and subject to the limitations specified in policy 3(1) above; and
(e) the appropriateness and ability of the proposed project or expenditure to meet the identified need or to mitigate the adverse fiscal or economic impact of the development.

(3) The reason for adopting policy 3 is to consolidate in one policy statement the purpose and basis for awarding grants and loans from the hard-rock mining impact trust account.

4. CONTENT OF GRANT AND LOAN APPLICATIONS.

(1) In applying to the board for a grant or loan from the hard-rock mining impact trust account, the designated local government unit shall provide the following information:

(a) Name of the applicant local government unit and the county in which it is located;
(b) Name of the affected mine and the county in which it is located;
(c) Description of the adverse fiscal or economic impact which has resulted or is expected to result from the cessation or reduction in mining-related activity;
(d) Description of the project or purpose for which the grant or loan is being requested;
(e) Description of how the proposed project or financial assistance will help to mitigate the adverse fiscal or economic impact of the cessation or reduction of mining-related activity;

(f) The amount of money being requested and whether the application is for a grant or loan;

(g) If the application is for a loan, the source of revenue from which the loan is to be repaid;

(h) The source and amount of other revenues or in-kind services, if any, expected to be used for the proposed project or purpose for which a grant or loan is being requested, and other documentation of the extent of local effort in meeting local needs;

(i) Citation of the statute which authorizes the applicant to provide or finance the service or facility for which a grant or loan is being requested;

(j) If the application is for a loan, citation of the statute which authorizes the applicant to incur indebtedness for the purpose for which the loan is being requested;

(k) A resolution signed by the affected local governing body certifying that it is submitting the application, that the purpose of the application is consistent with overall community planning, and that to the best of its knowledge the application contains accurate information; and

(l) Such other information as may be considered relevant by the applicant or as may be requested by the board.

(2) Information about the grant and loan program and an application form will be available from the board's administrative office.

(3) The reason for adopting policy 4 is to specify what information and analysis will be required in an application from a designated local government unit for a grant or loan from the hard-rock mining impact trust account, to notify potential applicants that an application form will be available from the board's office, and to notify potential applicants that the board may request additional information.

5. APPLICATION REVIEW PERIOD AND SUBMITTAL DEADLINE.

(1) Following its designation of local government units and areas impacted by the reduction or cessation of mining-related activity, the board will establish one or more application periods within which it will receive applications for grants or loans from the designated local government units.

(2) Applications must be submitted to the administrative office no less than 60 days prior to board consideration. Exceptions may be made for imminent threats to public health, safety and welfare at the board's discretion.

(3) The reason for adopting policy 5 is to notify applicants that the board will establish a review period and a submittal deadline.

6. PROCEDURE FOR REVIEWING APPLICATIONS AND AWARDING GRANTS AND LOANS.

(1) The board will utilize an application review procedure, which may vary depending on the severity of the impacts, the number and

complexity of the applications, and limitations on the money available from the subaccount.

(2) Upon receipt of the applications to be considered within the review period, the board will evaluate the merits of each application according to:

(a) the criteria specified in policies 4 and 5;
(b) the comparative merits of all applications within the same category, that is, for fiscal impact or economic impact; and
(c) the merits of the applications when considered in the context of other anticipated demands upon and deposits to the affected subaccount.

(3) After reviewing the initial grant or loan applications, the board may request additional information from applicants, may eliminate some applications from further consideration, and may conduct further evaluation of the remaining applications.

(4) The reason for adopting policy 6 is to notify potential applicants that the board will use an application review process appropriate to the quantity, quality, and complexity of the applications and the limitations on grant and loan awards, including the availability of funds.

7. FINANCIAL AWARDS AND LOAN INTEREST RATES.

(1) In making a financial award, the board will determine:

(a) the amount of the award;
(b) whether the award is to be a grant or a loan, or a combination of the two; and
(c) if a loan is to be awarded, the term of the loan, the rate of interest, when interest payments are to begin, and the schedule of principal and interest payments; and
(d) what conditions or stipulations, if any, will attach to the award.

(2) The reason for adopting policy 7 is to provide notice that the amount and conditions of the awards, including the terms and interest rates of loans, will be established by the board on a case-by-case basis when the award is made. This does not prevent subsequent modifications by the board and the recipient of the grant or loan.

8. CONTRACT WITH SUCCESSFUL APPLICANT.

(1) Upon the awarding of a grant or loan, an appropriate contractual agreement will be executed between the hard-rock mining impact board and the local government unit.

(2) The reason for adopting policy 8 is to establish the contractual nature of grant and loan awards accepted by designated local government units.

REFERENCE

STATEMENT OF INTENT
(1983)

HOUSE BILL 472
48th Legislature

SENATE COMMITTEE OF THE WHOLE AMENDMENT
March 17, 1983

That House Bill No. 472 have Statement of Intent Added:

A statement of intent is required for this bill because it expands the rulemaking authority of the hard-rock mining impact board.

(1) The legislature intends, under Section 2, that the hard-rock mining impact board be authorized to adopt rules under the Montana Administrative Procedure Act that will facilitate and effectuate its role as a Quasi-Judicial Board responsible for administering the Hard-Rock Mining Impact Act. The rules must ensure that implementation of the act is consistent with the purpose of mitigating local government impacts that may result from the commencement of large-scale hard-rock mineral development in the state.

(2) The legislature intends that the board adopt rules for implementing Section 3 by establishing criteria that the board will use when making decisions on whether or not to grant a requested 30-day extension to an impact review period.

(3) The legislature further intends that the board adopt rules implementing Section 5 that provide:

(a) a procedure for conducting hearings on objections to proposed impact plan amendments that is consistent with the Montana Administrative Procedures Act; and

(b) a list of factors that will be used to determine the validity of objections to the proposed impact plan amendments.

The rulemaking authority granted in this bill is intended to supersede the existing authority that the hard-rock mining impact board has pursuant to chapter 617 of the laws of 1981.

REFERENCE

STATEMENT OF INTENT
(1987)

HOUSE BILL 645
50th Legislature

House Natural Resources Committee

A statement of intent is required for this bill in order to clarify the role of the hard-rock mining impact board. The amendments to section 3 of this bill are designed to ensure that the board is not involved in reviewing the plan unless objections are filed under 90-3-307 or amendments are sought under 90-6-311.

The amendment of Rule 8.104.203A, Administrative Rules of Montana, does not indicate a legislative intent to define population changes associated with a mineral development. This matter should be determined by the mineral developer and the affected local governments. The amendment further indicates that the legislature desires that the hard-rock mining impact board should not influence this determination by enacting rules on matters that should be the product of discussions between the mineral developer and the affected local governments, except when the board is required to address impact plan concerns during the objections and amendment processes.

This bill also attempts to stress the cooperation role of the mineral developer and the affected local governments in formulating the impact plan. The impact plan, as a result, should reflect the concerns and agreements among these entities. Furthermore, to ensure public involvement in the planning process, a mandatory public hearing is required.

REFERENCE

METALLIFEROUS MINES LICENSE TAX

Section 15-37-101, MCA, provides for a license tax on metal mines:

> (1) Every person who engages in or carries on the business of working or operating any mine or mining property in the state of Montana from which gold, silver, copper, lead, or any other metal or metals or precious or semiprecious gems or stones of any kind shall be mined, extracted, or produced, whether such person shall carry on such business or engage in such work or operations as owner, lessee, trustee, possessor, receiver, or in any other capacity, must for each year when engaged in or carrying on such business, work, or operations pay to the department of revenue for the exclusive use and benefit of the state of Montana and impacted local government units a license tax for engaging in an carrying on such business, work, or operation in this state.

Section 15-37-103, MCA, establishes the rate of tax. The rate was revised by HB 446 in 1983, effective for taxable years after December 31, 1984. The tax is "an amount computed on the gross value of product" during the preceding calendar year at the rates shown on the following page.

As a result of audits, the Department of Revenue sometimes requires additional payment of tax with interest and penalties. If such a payment is required for license taxes imposed on taxable years prior to December 31, 1984, the resulting revenue is allocated to the general fund. Otherwise, all license tax revenue, penalties and interest are allocated as provided by 15-37-117, MCA:

> 15-37-117. **Disposition of metalliferous mines license taxes.** Metalliferous mines license taxes collected under the provisions of this part are allocated as follows:
>
> (1) to the credit of the general fund of the state, 67% of total collections each year;
>
> (2) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 33% of total collections each year.

After deducting the administrative and operating expenses of the Hard-Rock Mining Impact Board, all money deposited to the Hard-Rock Mining Impact Trust Account is segregated into subaccounts by county of origin -- that is, the county in which the taxpaying mine is located. The money is held in the county subaccount until the taxpaying mine closes or until it experiences a 50% reduction in workforce, compared with employment during the preceding five years.

When this occurs, the Board designates the local government units and impact area affected by the mine closure or workforce reduction. Designated local government units may apply to the Board for grants and loans to help mitigate adverse fiscal and economic impacts, as provided by 90-6-321 and 90-6-322, MCA. The Board may award grants and loans only from the appropriate subaccount.

Interest earned on the Trust Account is deposited to the State's General Fund.

Metalliferous Mines License Tax Rates
Before and After Being Revised by HB 446

Before January 1, 1985, the rates were as follows:

Gross Value of Product	Rate of Tax (% of gross value)	Prior to Change
first $100,000	0.15%	+ 0.15%
more than $100,000 and not more than $250,000	0.575% of the increment	+ 0.575%
more than $250,000 and not more than $400,000	0.86% of the increment	+ 0.36%
more than $400,000 and not more than $500,000	1.15% of the increment	+ 0.65%
more than $500,000	1.438% of the increment	+ 0.438% to $1,000,000
[more than $1,000,000]		- 0.062%

After December 31, 1984, the rates are as follows:

Gross Value of Product	Rate of Tax (% of gross value)	Effect of Change
first $250,000	0%	- 0.15% or - 0.575%
more than $250,000 and not more than $500,000	.5% of the increment	- 0.36% or - 0.65%
more than $500,000 and not more than $1,000,000	1.0% of the increment	- 0.438%
more than $1,000,000	1.5% of the increment	+ 0.062%